AGENDA

I. Agenda

II. Public Forum
Public forum for items not on the agenda. See the Agenda Packet for details on how to participate in the public forum for this meeting.

III. Proposed CDO Amendment: Short Term Rentals
The Joint Committee will continue to discuss the draft framework for regulating short-term rentals (STR) in the Burlington Comprehensive Development Ordinance, including elements that will be relocated to Ch. 18 Minimum Housing Standards.

Information related to this item is included in the agenda packet and online, including:
- Updated staff memo regarding STR amendment and remaining policy questions: p. 3
- Draft CDO (Zoning) Amendment Language: p. 8-12
- Draft Ch. 18 (Housing Code) Amendment Language: p. 13

Staff Recommendation: The Committee is requested to provide specific feedback on any further changes to the provisions in either the CDO or Ch. 18, and direction on how it wishes to move forward with this item.

IV. STR Public Forum
Public forum on the proposed framework for Short Term Rentals.

V. Commissioner Items
a. Upcoming Meetings: March 23 and April 13, 2021 at 6:30pm

VI. Minutes & Communications
a. The minutes of the February 23, 2021 meeting are enclosed in the agenda packet on p. 25.
b. Communications are enclosed in the agenda packet beginning on p. 28.

VII. Adjourn
Guidance for Participating in a Virtual Planning Commission Meeting

As social distancing measures to preserve public health and safety continue to be required to prevent the spread of COVID-19, or are recommended as a standard practice, the Office of City Planning will be supporting the Planning Commission to conduct their meetings online via Zoom. Here is information about how to join a virtual meeting, and what to expect while participating.

General Guidance for Public Participation

Please remember that in this digital meeting environment, meetings are open to the public and anyone may be watching or listening even if you cannot see them. Meetings will be recorded, and both the recording and chat content of the meeting will be maintained as a public record.

Please ensure your display photo and screen name are professional, such as using your first and last name. Please test your audio and video prior to the start of a meeting, and familiarize yourself with how to join a meeting by your chosen method. And finally, please be patient with us. Technology doesn’t always work as planned, and we are all learning how to hold a successful virtual meeting!

How to Join a Virtual Meeting

Zoom allows participation via either computer or telephone. Each agenda for a meeting that will be conducted virtually will include details about how to join via either of these options, including a web address, phone number, Meeting ID, and password.

If you participate via computer, you have the option of seeing Commissioner videos and any presentation materials that may be shared. If you use either a standard phone or cell phone to call in, you will only hear the audio portion of the meeting. If you join via a smartphone, you may have the option to download the Zoom app, which will enable you to see and hear the meeting.

How to Participate in a Virtual Meeting

During meetings, only Planning Commission members and limited staff members will be viewed on video. Members of the public attending a meeting will be muted, except when invited to speak during public forum or a public hearing. Whether members of the public can speak at other times during the meeting is the discretion of the Chair.

If you want to speak during public forum, please take the following steps to assist us in making this process run as smoothly as possible:

- Email staff at mtuttle@burlingtonvt.gov by 5pm on the day before a meeting to indicate your interest in speaking. You do not need to provide your comments. Staff will enable your microphone as your name is called from a list of interested speakers.
- During a meeting, you can use the “Raise Hand” feature, or indicate in a chat message that you wish to speak during public forum. Staff will enable your microphone as your name is called.
- If you are interested in submitting your comments in writing instead of speaking during the meeting, you may do so by 5pm the day before a meeting, they will be forwarded to the Commissioners ahead of the meeting.
TO: Burlington Planning Commission & City Council
   Ordinance Committee
FROM: Scott Gustin, Principal Planner & Zoning Division Manager
       Meagan Tuttle, Comprehensive Planner, Office of City Planning
DATE: March 9, 2021
RE: Proposed CDO Amendment ZA-20-05: Short Term Rentals & Ch. 18 Minimum Housing Code amendments

Overview & Background

This package of amendments resulted from the 2019 Mayor’s Housing Summit, and the subsequent Council Resolution in October 2019, which directed a Joint Committee of the Planning Commission & City Council Ordinance Committee to create a regulatory framework for short-term rentals that created tiers and dis incentivizes the most impactful uses in order to:
- Limit the number of housing units converted for short-term rental purposes;
- Ensure that conversions contribute to efforts to preserve and expand affordable housing;
- Provide some flexibility for homeowners to earn income; and
- Recognize that some supply of short-term rentals benefits the Burlington economy.

Defining Short Term Rentals
A short term rental (or STR) is typically a dwelling unit that is rented in whole or in part to guests for less than 30 consecutive days for overnight stays. It may be an apartment, a house, or just a bedroom within a housing unit. AirBnB exemplifies short term rentals.

In the last several years, there has been significant and growing demand for STR’s internationally, and locally. They benefit owners with a source of income that can help subsidize a cost of living that may otherwise be unaffordable. STR’s may also encourage investment in a property. They benefit Burlington’s tourism economy and provide guests with a convenient, and often more affordable, place to stay when traveling. They also generate city and state tax revenue via the Rooms & Meals Tax (RMT). Short term rentals, however, do not come without impacts. Some have the effect of removing dwelling units for long-term occupancy, and they may contribute to rising rental rates and purchase prices. Given the high turn-over of guests, short-term rentals may bring about nuisance impacts such as traffic, noise, and trash to neighborhoods.

As the Joint Committee has heard from many of the city’s STR hosts, short-term rentals are uniquely flexible and come in a variety of forms—beyond the major distinction between whole unit and partial unit STR’s. The same dwelling unit may alternate between long- and short-term rental uses within a relatively short period of time. A dwelling unit may serve as one’s primary residence for most of the year, and serve as a short-term rental while the resident is away. A short-term rental may coexist with a number of long-term rentals within a multi-family building. This variability and flexibility needs to be considered within the context of the overarching policy objective: to protect Burlington’s limited housing stock, while affording reasonable opportunity to host short-term rentals within the city.

Short Term Rentals in Burlington
Burlington has some 10,000+ rental housing units, representing 60% of all housing units. While the June 2019 Housing Summit reported hopeful trends in a slightly increasing vacancy rate and slight slowing annual rent inflation, the city’s housing market remains tight with the long-time rental vacancy rate between 1% and 2%. Short-term rentals have replaced a growing number of dwelling...
units citywide in recent years. According to data provided by HostCompliance, the number of short term rentals within Burlington increased 26% between 2018 and 2019. The average monthly number of short term rentals within city limits between June and September 2020 was 403 listings, representing 357 unique rentals.

As of September 2020, 71% STRs in Burlington are an entire dwelling unit, whereas 29% are partial dwelling units (i.e. bedrooms). This is a change from 67% and 33% respectively in 2019, likely due to COVID-19 concerns. In September 2020, 55% of the city’s STR’s were in single-family properties and 45% in multi-family properties. The COVID-19 pandemic has had wide-ranging impacts on the STR market globally and locally.

While the total number of unique properties and listings in Burlington has changed little in 2020, the number of active listings has varied this year due travel restrictions and hosts’ management decisions. Stories shared by STR hosts and data from other sites, such as AirDNA, suggest that many of these listings may currently be inactive, are being rented as an STR for a longer duration (such as for weeks or months), or are being used as temporary accommodations for people who have relocated due to the pandemic. It will be some time before the long-term impacts of COVID-19 on the local STR market are understood.

Joint Committee work on STR Proposal

The Joint Committee has received information on STRs in the city during meetings spanning more than a year. In response to public and Joint Committee comments, the original draft regulatory framework has been revised in four major ways:

- Revision to STR limits within multi-unit buildings to be less than 50% of units, and a related clarification that exceeding these limits results in a “lodging” use.
- Allow some degree of off-site hosting for STR’s within multi-unit buildings.
- Consider an alternative to Housing Replacement fees, such as an additional fee based on STR income. In either scenario, fees will support the City’s Housing Trust Fund. This additional fee needs to be determined by the City Council, and likely through a charter change.
- Most recently, the framework has been revised to specifically enable hosts to short term rent their primary residence, no matter the residential building type.

The standard for when the host is required to live on or be the owner of the property hosting an STR(s) emerged as one of the most important policy levers in determining how many STRs would be possible within the city. The Committee deliberated this issue on many occasions, specifically with regard to how permissive the policy should be, and what recourse the City had for changing the policy or curtailing STR use if too many housing units became STRs.

As a result, staff provided a proposal for the Joint Committee’s consideration to shift much of the regulatory framework from the Comprehensive Development Ordinance (CDO) to Chapter 18: Minimum Housing Standards (Ch.18) of the City’s Code of Ordinances. This shift would preserve the ability to implement key policy objectives, but leaves a limited role for zoning regulation of STRs. Specifically, Ch. 18 can regulate the number of STRs permitted on a property or in a building as well as host-occupancy requirements where applicable. Ch.18 continues to be the tool to administer life safety standards and the annual rental registration process.

Moving STR standards out of the CDO has several benefits, such as avoiding the onerous process of requiring new zoning permits each time a unit switches from long-term and short-term use. But most significantly, it addresses the Committee’s feeling that the policy may need to be adjusted in the future, and eliminates the concern that non-conforming STRs would be exempt from such changes. Because standards in Ch.18 apply at the time of each annual rental registration, any policy changes made since an STR’s last permit renewal would be applicable.
Therefore, the limited role for regulating STR's through the CDO include allowing STR's by right and creating a definition that points to the specific STR regulations in Ch. 18. Staff also proposes to condense the definitions for multiple lodging types (not including STRs) into one use/definition.

**Decision-making points for March 9 Committee Meeting**

Having most recently decided on the matter regarding short term rentals of a host’s primary residence, only two questions remain to be addressed by the Joint Committee:

- When is the property required to be the STR host’s primary residence? Under what circumstances, if any, should off-site hosting be allowed? As presently drafted, the standards allow off-site hosting only in multi-family attached dwellings of 3 or more units.
- Should whole unit STR’s be allowed at all in buildings with 5 or more units? As most recently revised, the draft proposal prohibits STR’s in multi-family buildings of 5 or more units. As previously drafted, 2 STR units were permitted in 5-6 unit buildings and 3 STR units were permitted in 7+ unit buildings.

**Proposed Amendment**

<table>
<thead>
<tr>
<th>Amendment Type</th>
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<tr>
<td>Text Amendment</td>
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<tr>
<td>Map Amendment</td>
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<tr>
<td>Text &amp; Map Amendment</td>
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</table>

**Purpose Statement**

The proposed regulatory framework is aimed at minimizing the potential for adverse impacts to the city’s housing stock, while balancing some flexibility for hosts to operate short term rentals. Together with amendments to Minimum Housing Standards in the City’s Code of Ordinances, the proposed amendment is intended to allow the short term rental of bedrooms within a dwelling, and the use of a host’s own dwelling occasionally as a short-term rental, with minimal burden to the host. Per-building caps are applied to whole unit short term rentals operated by off-site hosts so as to limit their proliferation. In an effort to balance the benefits to hosts with the preservation of long-term housing stock, short term rentals would generally be allowed wherever residential uses are allowed; however, in most scenarios, hosts must be a resident of the property.

**Proposed Amendments**

**CDO Amendments**

With the shift of much of the regulatory framework to Ch. 18, only limited changes to the Burlington Comprehensive Development Ordinance are now proposed:

1. **Amend Article 13 Definitions to define “short term rental”, modify “lodging” definitions**
   Define short term rental as a type of dwelling unit and refer to standards in Ch.18. The STR definitions have most recently been revised to reflect the state’s 14-day minimum and refer to the Vermont rooms and meals tax. Additionally, the definitions of Hotel/Motel and Hostel are streamlined to a more general “Lodging” definition to reduce redundancy and inconsistencies in how various traditional lodging uses are permitted.

2. **Add STRs as a “special residential use” to Appendix A- Use Table and in Article 14-Downtown Code**
   This will establish that short term rentals are allowed anywhere that residential uses are allowed, and will refer to Ch. 18 for specific standards.

**Ch. 18 Minimum Housing Code Amendments**
The attached documents detail the related amendments to *Ch. 18 Minimum Housing Standards*. While *Ch. 18* amendments are not normally the purview of the Planning Commission, they are reviewed by the City Council Ordinance Committee. Further, in this instance, the Joint Committee is recommending *Ch. 18* amendments because they resulted from the Committee’s charge from the City Council to create a regulatory framework for STRs. These amendments include:

1. **Establish standards for the number and type of STRs permitted in a building, and when the host is required to be the owner/occupant of the property.**
   Sets limits for the number of bedrooms rented in a Partial Unit STR, and limits for the number of Whole Unit STRs permitted in a building based on the number of units in the building. Additionally, requires host occupancy of the unit in which the STR is located except for in limited cases for STRs in multi-unit buildings of 3 or more units.

2. **Establish minimum life safety standards for STRs, and requirements for annual rental registration.**
   Defines a limited set of life safety standards for STRs, and additional information to be provided on rental registration applications for housing units to be used as STRs.

**Relationship to planBTV**
*This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).*

**Compatibility with Proposed Future Land Use & Density**
The STR proposal is intended to protect existing housing from unlimited conversion to short term rental use. Data shows increasing numbers of short term rentals in recent years, largely at the expense of long term housing stock. This increase puts additional pressure on the city’s available housing and degree of affordability. The proposed measures will establish parameters for allowing short term rentals while limiting their adverse impacts on the city’s housing supply and affordability.

**Impact on Safe & Affordable Housing**
The proposal will have no impact on the intensity or density of future land use. It will; however, ensure that future short term rentals are compatible with the residential neighborhoods that so many of them occupy. Short term rentals will be allowed wherever residential uses are allowed. Per-building caps will prevent wholesale conversion of residential units into short term rentals.

**Planned Community Facilities**
This amendment has no impact on any planned community facilities.

**Process Overview**
The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<p>| Draft Amendment prepared by: Staff, Joint Cmte, based on City Council referral | Presentation to &amp; discussion by Joint Committee 1/14, 1/28, 2/11, 2/19, 8/11, 9/23, 10/28, 11/24, 12/8, 1/12, 2/9, 3/9 | Approve for Public Hearing | Public Hearing | Approve &amp; forward to Council | Continue discussion |
|---|---|---|---|---|---|---|</p>
<table>
<thead>
<tr>
<th>City Council Process</th>
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<tr>
<td>First Read &amp; Referral to Ordinance Cmte</td>
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<tr>
<td>Ordinance Committee discussion</td>
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<td>Ordinance Cmte recommends to Council</td>
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<td>Second Read &amp; Public Hearing</td>
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<td>Approval &amp; Adoption</td>
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<td>Rejected</td>
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ARTICLE 13: DEFINITIONS

Sec. 13.1.1 Miscellaneous  As written.

Sec. 13.1.2 Definitions

For the purpose of this ordinance certain terms and words are herein defined as follows:

Unless defined to the contrary in Section 4303 of the Vermont Planning and Development Act as amended, or defined otherwise in this section, definitions contained in the building code of the City of Burlington, Sections 8-2 and 13-1 of the Code of Ordinances, as amended, incorporating the currently adopted edition of the American Insurance Association’s “National Building Code” and the National Fire Protection Association’s “National Fire Code” shall prevail.

Additional definitions specifically pertaining to Art. 14 planBTV: Downtown Code can be found in Sec. 14.8, and shall take precedence without limitation over any duplicative or conflicting definitions of this Article.

All other definitions as written.

Hostel: A place where travelers may stay for a limited duration, as recognized by the International Hostel Association.

Hotel, Inn or Motel Lodging: An establishment providing for a fee three or more temporary guest rooms and customary lodging services (such as onsite staffing at all hours, lobby space, and room service), and subject to the Vermont rooms and meals tax. Lodging may, or may not, be owner occupied. Lodging does not include historic inns or short term rentals (except when per-building short term rental limits noted in Chapter 18: Minimum Housing Standards of the City Code of Ordinances are exceeded).

Short term rental (STR): A dwelling unit that is rented in whole or in part to guests for less than thirty (30) consecutive days and for more than 14 days for overnight stays per calendar year and is subject to the Vermont rooms and meals tax, pursuant to Chapter 18: Minimum Housing Standards of the City Code of Ordinances.
### Appendix A - Use Table – All Zoning Districts

<table>
<thead>
<tr>
<th>Uses</th>
<th>Urban Reserve</th>
<th>Recreation, Conservation &amp; Open Space</th>
<th>Institutional</th>
<th>Residential</th>
<th>Downtown Mixed Use</th>
<th>Neighborhood Mixed Use</th>
<th>Enterprise</th>
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<tbody>
<tr>
<td>1. Residential uses are not permitted except as an accessory use to an agricultural use.</td>
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<td>2. Duplexes may be constructed on lots which meet the minimum lot size specified in Table 4.4.5-1.</td>
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<td>3. Duplexes shall only be allowed as a result of a conversion of an existing single family home. New duplexes are prohibited.</td>
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<td>4. No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the R CO district.</td>
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<td>5. An existing fraternity, sorority, or other institutional use may be converted to dormitory use subject to conditional use approval by the DRB.</td>
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<td>6. Must be owner-occupied.</td>
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<td>7. Must be located on a major street.</td>
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<td>8. Small daycare centers and small preschools in the R CO zones shall only be allowed as part of small museums and shall constitute less than 50% of the gross floor area of the museum.</td>
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<td>9. Automobile sales not permitted other than as a separate principal use subject to obtaining a separate zoning permit.</td>
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<td>10. Exterior storage and display not permitted.</td>
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<td>11. All repairs must be contained within an enclosed structure.</td>
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<td>12. No fuel pumps shall be allowed other than as a separate principal use subject to obtaining a separate zoning permit.</td>
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<td>13. Permitted hours of operation 5:30 a.m. to 11:00 p.m.</td>
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<td>14. Such uses not to exceed ten thousand (10,000) square feet per establishment.</td>
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<td>15. Excludes storage of uncured hides, explosives, and oil and gas products.</td>
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<td>16. See Sec.4.4.1(d) 2 for more explicit language regarding permitted and conditional uses in the Downtown Waterfront – Public Trust District.</td>
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<td>17. Allowed only as an accessory use.</td>
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<td>18. A permit issued in the Shelburne Rd Plaza and Ethan Allen Shopping Center.</td>
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<td>19. [Reserved].</td>
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<td>20. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810 are exempt from regulation under local zoning.</td>
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<td>21. See Sec. 4.4.7 (c) for specific allowances and restrictions regarding uses in the Urban Reserve District.</td>
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<td>22. See Sec. 4.4.5 (d) 6 for specific allowances and restrictions regarding Neighborhood Commercial Uses in Residential districts.</td>
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<td>23. Allowed only on properties with frontage on Pine Street.</td>
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<td>24. Such uses shall not exceed 4,000 square feet in size.</td>
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### Legend:

- **Y**: Permitted Use in this district
- **N**: Use not permitted in this district

### Abbreviation and Zoning Districts:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Zoning District</th>
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<tbody>
<tr>
<td>RCO - A</td>
<td>RCO - Agriculture</td>
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<tr>
<td>RCO - RG</td>
<td>RCO - Recreation/Greenspace</td>
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<tr>
<td>RCO - C</td>
<td>RCO - Conservation</td>
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<tr>
<td>I</td>
<td>Institutional</td>
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<td>RL/W</td>
<td>Residential Low Density, Waterfront Residential Low Density</td>
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<tr>
<td>RM/W</td>
<td>Residential Medium Density, Waterfront Residential Medium Density</td>
</tr>
<tr>
<td>RH</td>
<td>Residential High Density</td>
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<td>DW-PT</td>
<td>Downtown Waterfront-Public Trust</td>
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<td>NMU</td>
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<td>NAC</td>
<td>Neighborhood Activity Center</td>
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<td>NAC-RC</td>
<td>NAC - Riverside Corridor</td>
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<td>NAC-CR</td>
<td>NAC - Cambrian Rose</td>
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<tr>
<td>E-2E</td>
<td>Enterprise – Agricultural Processing and Energy</td>
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<tr>
<td>E-LM</td>
<td>Enterprise – Light Manufacturing</td>
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</tbody>
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**Proposed Amendment ZA-20-05, Updated January 2021**
25. Dormitories are only allowed on properties contiguous to a school existing as of January 1, 2010.
26. The mixed uses shall be limited to those that are either permitted, conditional, or pre-existing nonconforming in the zoning district.
27. This use is permitted or conditionally permitted on lots south of Home Avenue only when one or more Industrial or Art Production use(s) exists on the lot, and when the combined gross floor area of all uses with this footnote does not exceed 49% of the Gross floor Area on the lot.
28. Grocery Stores up to but not to exceed 35,000 square feet may be permitted subject to conditional use approval by the DRB in that portion of the Enterprise-Light Manufacturing District between Flynn and Home Avenue.
29. Must be fully enclosed within a building.
30. New single detached dwellings are not permitted. However, a pre-existing single detached dwelling may be reverted to a single family use regardless of its present use if the building was originally designed and constructed for that purpose.
31. See special use standards of Sec. 5.4.13, Emergency Shelters.
32. Performing Arts Centers in the ELM zone shall be limited to properties with frontage on Pine Street up to 5,000 square feet in size, and to properties with frontage on Industrial Parkway up to 15,000 square feet in size. Performing Arts Centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment.
33. Short term rentals are permitted by right, subject to per building limitations and rental registration requirements pursuant to Chapter 18, Minimum Housing Standards of the City Code of Ordinances.

For permitted and conditional uses within the Downtown and Waterfront Form Districts, refer to Article 14.
### 14.3.4-H Use Type FD6

*Uses not specifically listed in a use table, and that are not similar in nature and impact to a use that is listed, are not permitted.*

#### RESIDENTIAL - GENERAL

<table>
<thead>
<tr>
<th>Use Type</th>
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<tbody>
<tr>
<td>Attached Dwellings</td>
<td>P</td>
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<tr>
<td>Single Detached Dwellings (only pre-existing Buildings originally designed and constructed for such purpose)</td>
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#### RESIDENTIAL - SPECIAL

<table>
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<tr>
<td>Boarding House[^1^]</td>
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</tr>
<tr>
<td>Community House (Sec.14.6.6.e)</td>
<td>P</td>
</tr>
<tr>
<td>Convalescent/Nursing Home</td>
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</tr>
<tr>
<td>Short Term Rental (See Ch.18: Minimum Housing)</td>
<td>P</td>
</tr>
</tbody>
</table>

#### SHORT-TERM ACCOMMODATIONS

<table>
<thead>
<tr>
<th>Use Type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Bed and Breakfast[^1^]</td>
<td>P</td>
</tr>
<tr>
<td>Historic Inn (Sec.14.6.6.c)</td>
<td>P</td>
</tr>
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<td>Hotel</td>
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</tr>
<tr>
<td>Lodging</td>
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</tr>
<tr>
<td>Shelter</td>
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</tr>
</tbody>
</table>

#### RETAIL - GENERAL

<table>
<thead>
<tr>
<th>Use Type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>ATM</td>
<td>P</td>
</tr>
<tr>
<td>Auto/Boat/RV Sales/Rentals[^1^]</td>
<td>P</td>
</tr>
<tr>
<td>Convenience Store</td>
<td>P</td>
</tr>
<tr>
<td>Fuel Service Station[^2^] (Sec.14.6.6.d)</td>
<td>CU</td>
</tr>
<tr>
<td>General Merchandise/Retail</td>
<td>P</td>
</tr>
</tbody>
</table>

#### RETAIL - OUTDOOR

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Use Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Air Markets</td>
<td>P</td>
</tr>
</tbody>
</table>

#### OFFICE & SERVICE

<table>
<thead>
<tr>
<th>Use Type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Animal Grooming</td>
<td>P</td>
</tr>
<tr>
<td>Auto/Boat/RV Service[^3^] (Sec.14.6.6.d)</td>
<td>P</td>
</tr>
<tr>
<td>Beauty Salon/Barber Shop/Spa</td>
<td>P</td>
</tr>
<tr>
<td>Car Wash</td>
<td>P</td>
</tr>
<tr>
<td>Crisis Counseling Center (Sec. 14.6.6.g)</td>
<td>P</td>
</tr>
<tr>
<td>Office – General</td>
<td>P</td>
</tr>
<tr>
<td>Office – Medical</td>
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</tr>
<tr>
<td>Office – Technical</td>
<td>P</td>
</tr>
<tr>
<td>Dry Cleaning Service</td>
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<td>Laundromat</td>
<td>P</td>
</tr>
<tr>
<td>Mental Health Crisis Center</td>
<td>P</td>
</tr>
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<td>Tailor Shop</td>
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</tbody>
</table>

#### HOSPITALITY/ENTERTAINMENT/RECREATION

<table>
<thead>
<tr>
<th>Use Type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Aquarium</td>
<td>P</td>
</tr>
<tr>
<td>Art Gallery/Studio</td>
<td>P</td>
</tr>
<tr>
<td>Bar, Tavern</td>
<td>P</td>
</tr>
<tr>
<td>Billiards, Bowling &amp; Arcade</td>
<td>P</td>
</tr>
<tr>
<td>Café</td>
<td>P</td>
</tr>
<tr>
<td>Cinema</td>
<td>P</td>
</tr>
<tr>
<td>Club, Membership</td>
<td>P</td>
</tr>
<tr>
<td>Community Center</td>
<td>P</td>
</tr>
<tr>
<td>Conference/Convention Center</td>
<td>P</td>
</tr>
<tr>
<td>Museum</td>
<td>P</td>
</tr>
<tr>
<td>Performing Arts Center</td>
<td>P</td>
</tr>
<tr>
<td>Performing Arts Studio</td>
<td>P</td>
</tr>
<tr>
<td>Recreational Facility - Indoor</td>
<td>P</td>
</tr>
<tr>
<td>Restaurant</td>
<td>P</td>
</tr>
<tr>
<td>Restaurant – Take Out</td>
<td>P</td>
</tr>
</tbody>
</table>

#### Key

- **Permitted Use**
- **Conditional Use**

#### END NOTES

1: Must be owner-occupied.
2: Automobile sales not permitted as an Accessory Use
3: Exterior storage and display not permitted.
### 14.3.5-H- USE TYPES

**FD5**

<table>
<thead>
<tr>
<th>Uses not specifically listed, and that are not similar in nature and impact to a use that is listed, are not permitted.</th>
</tr>
</thead>
</table>

#### RESIDENTIAL - GENERAL

<table>
<thead>
<tr>
<th>Use Type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Attached Dwellings</td>
<td>P</td>
</tr>
<tr>
<td>Single Detached Dwellings (only pre-existing Buildings originally designed and constructed for such purpose)</td>
<td>P</td>
</tr>
</tbody>
</table>

#### RESIDENTIAL - SPECIAL

<table>
<thead>
<tr>
<th>Use Type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Assisted Living</td>
<td>P</td>
</tr>
<tr>
<td>Boarding House(^1)</td>
<td>P</td>
</tr>
<tr>
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</tr>
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<tbody>
<tr>
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<tr>
<td>Garden Supply Store</td>
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<td>Tailor Shop</td>
<td>P</td>
</tr>
<tr>
<td>Vehicle/Boat Repair/Service(^2)</td>
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**END NOTES**

\(^1\)Must be owner-occupied.

\(^2\)Exterior storage and display not permitted.
ARTICLE I. IN GENERAL

18-1 Short title.
This chapter shall be known and may be cited as the "Minimum Housing Standards Ordinance of the City of Burlington."

(Rev. Ords. 1962, § 921)

18-2 Definitions.
For the purposes of this chapter, the following terms, phrases, words, and their derivations, shall have the meanings given herein:

*Host* means a person who operates a short term rental (whole or partial unit). The host may be the property owner or tenant.

*Hotel or motel* means an establishment which holds itself out to the public by offering temporary (less than 30 days) sleeping accommodations for compensation consideration and is subject to the Vermont rooms and meals tax. Hotel or motel is defined as lodging in the Comprehensive Development Ordinance. Hotel or motel does not include short term rental.

*Occupant* shall mean any person including an owner living and sleeping in a dwelling unit or rooming unit.

*Rental unit* shall mean any structure, a part of which is rented out and occupied as a residence by another, for compensation, including duplex units, so called. Rental unit shall also include short term rental. The portion of any such unit being occupied as a residence by the owner shall be considered a rental unit.

*Roominghouse* shall mean any dwelling or that part thereof containing one or more rooming units in which space is let to three (3) or more persons for thirty (30) consecutive days or more.

*Rooming unit* shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes. A rooming unit does not include short term rental.

*Short term rental (STR)* shall mean a dwelling unit that is rented in whole or in part to guests for less than thirty (30) consecutive days and for more than 14 days for overnight stays per calendar year and is subject to the Vermont rooms and meals tax. It may be a whole unit short term rental (the entire dwelling unit) or a partial unit short term rental (just bedrooms within the dwelling unit).
Target housing means any dwelling constructed prior to 1978, except any zero (0) bedroom dwelling or any dwelling located in multiple-unit buildings or projects reserved for the exclusive use of the elderly or persons with disabilities, unless a child six (6) years of age or younger resides in or is expected to reside in that dwelling. "Target housing" does not include units in a hotel, motel, or other lodging, including condominiums that are rented for transient occupancy for less than thirty (30) days or less.

All other definitions as written.

18-3 – 18-14 Reserved

As written.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

18-15 Registration required.

(a) The owners of all rental units subject to inspection pursuant to Section 18-16 shall be required to annually file a registration application and fee with the enforcement agency, which shall be due annually on or before April 1. Additional requirements pertaining only to short term rentals are listed in subsection (f).

The owners must complete a rental property information form to be provided by the enforcement agency which contains the following information:

(1) The address of the property.

(2) The number of dwelling units at that address.

(3) The number of rental units at that address.

(4) The maximum number of residents in each rental unit.

(5) The number of sleeping rooms in each rental unit.

(6) The number of families living in each rental unit.

(7) The number of unrelated adults in each rental unit.
(8) The number of vehicles owned or used by residents of the premises and the number of parking spaces that are dedicated for the rental units at the property.

(9) The name, address, phone number, date of birth, drivers license and state and military status (active or not) of the property owner, and if the owner is a corporation, the registered corporate agent and the president of the corporation and his/her name and address, and if the owner is a partnership, the registered partnership agent, and the names and addresses of the general partners.

(10) The name, address and phone number of any local (within Chittenden County) managing agent. All owners who do not live within Chittenden County are required to designate a managing agent located in Chittenden County who is empowered to represent the owner in matters concerning compliance with this chapter.

(11) The name, address and phone number of an emergency contact for this property. All properties must have an emergency contact within Chittenden County.

(12) A designated person within the state for service of process for this property. All owners who do not live within Chittenden County are required to designate a managing agent located in Chittenden County for service of process. The name, address, phone number, date of birth, drivers license number and state and military status (active or not) of the designated agent.

(13) State yes or no to the following question: If the number of unrelated adults listed in paragraph (a)(7) above is greater than four (4), do those adults purport to reside in the rental unit as a "functional family" as that term is defined in the Burlington Zoning Ordinance?

(b) Upon purchase or transfer of property containing a rental unit, the purchasers shall file a new registration application and a fifty dollars ($50.00) fee. The payment of this fee shall cover one (1) or more rental properties being transferred to a new owner on the same date.

(c) Prior to occupancy of any newly constructed rental unit or conversion of use to a rental unit, the owner shall file an application for registration with the agency and pay the required fee which shall be the pro rata portion of the fee due for that year based on the date of registration.

(d) It shall be a violation of the city minimum housing ordinance for an owner of any rental unit within the city to fail to register a rental unit as required by this section.
(e) Property owners shall have a continuing obligation to notify the enforcement agency of any changes in the information required under subsection (a) during the periods between the required filings of the registration applications.

(f) In addition to registration requirements for all rental units noted in (a) – (e) above, all short term rentals subject to inspection pursuant to Sec. 18-16 shall be subject to the standards of Table 18-15-1 below:

<table>
<thead>
<tr>
<th>Table 18-15-1 Short Term Rental Types, Limits, and Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Whole Unit STRs</strong></td>
</tr>
<tr>
<td>Building Type</td>
</tr>
<tr>
<td>Dwelling unit that is not the host's primary residence but is located within the same building or property as the host's primary residence.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td>Dwelling unit that is owned by a host whose primary residence is off-site.</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

A dwelling unit that is the host’s primary residence (as defined in the CDO) may be used as a STR within any building type, and are not subject to the limits above.

On lots containing 2 or more detached primary structures/buildings, the STR limits are applicable to each building, based on the number of dwelling units in each building.

Buildings exceeding these limits are a Lodging use, and subject to applicable standards in the Comprehensive Development Ordinance.

<table>
<thead>
<tr>
<th>Partial Unit STRs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bedroom Limit within STR</strong></td>
</tr>
<tr>
<td>Dwelling unit that is the host’s primary residence.</td>
</tr>
</tbody>
</table>

Rooms let individually as an STR in a dwelling unit that is not the host’s primary residence is not permitted.

(1) Additional information to be included in the rental property information form provided by the enforcement agency:
(i) How many short term rentals are there in the building?

- Number of whole unit short term rentals?
- Number of partial unit short term rentals?

(ii) Will the short term rental(s) be rented for more than 183 days per year?

(iii) What is the tax account number?

(Ord. of 4-12-93; Ord. of 4-24-95; Ord. of 9-11-00)

18-16 Inspection required.

The enforcement officer or his/her delegate shall make inspections of rental units within the city, including hotel and motel rooms which are regularly let to the same tenant(s) for a period in excess of thirty (30) days or more, for the purpose of determining whether a violation of this chapter exists.

Excluded from periodic inspection shall be all owner-occupied dwellings containing one (1) or two (2) rooms which are rented out for compensation (including partial unit short term rentals of just one {1} or two {2} bedrooms). Also excluded from inspection are university and college dormitories that conduct regular, comprehensive inspection programs and annually certify compliance with the minimum housing standards ordinance to the enforcement agency. Inspections of dwellings and dwelling units other than those that are subject to periodic inspections, or of hospital rooms, hotel and motel rooms or dormitories not subject to periodic inspections as provided for in this section, shall be made only upon complaint or upon request of the owner thereof.

All records, including inspection reports, records of complaints received and investigated, and plan for inspections of rental units, shall be available for public inspection.

(Ord. of 4-12-93; Ord. of 9-11-00)

18-17 – 18-29

As written.

18-29a Termination of rental housing tenancy; rental housing rent increase.

(a) In any case where there is no written rental agreement, no landlord may terminate a tenancy of rental housing without cause unless at least 90 (ninety) days’ advance written notice to the tenant(s) has been provided in situations where the tenancy has been less than two (2) years in duration, nor may any such
(b) Unless inconsistent with the terms of a written rental agreement, no tenant may terminate a residential tenancy without providing actual notice to the landlord at least two (2) rental periods in advance of the termination date specified in such notice.

(c) No increase in rent for rental housing within the city shall be effectuated without at least 90 (ninety) days’ advance written notice to the tenant(s).

(d) The provisions of this subsection do not apply to short term rentals.

(Ord. of 10-29-04)

18-30 Fees.

(a) Registration fee. Pursuant to Section 18-15, a registration fee shall be charged to the owner of every rental unit in the city that is subject to periodic inspections. This fee shall be in an amount determined by and dedicated solely to the cost of providing rental housing inspection services, clerical, administrative and mediation support services for the housing board of review and landlord/tenant resource services. Any surplus remaining in this fund at the end of a fiscal year shall remain part of the fund and shall be carried forward to the next fiscal year. This fee shall be reviewed annually by the finance board. The fee shall be in the amount of one hundred ten dollars ($110.00) per unit per year except for owner occupied dwellings with two (2) or less units, in which case the fee shall be eighty dollars ($80.00) and except for partial unit short term rentals, in which case the fee shall be fifty dollars ($50.00).

Remainder of Sec. 18-30 as written.

18-31 – 18-69

As written.

ARTICLE III. MINIMUM STANDARDS

DIVISION 1. GENERALLY

18-70 Compliance with article required.

No person shall occupy as owner/occupant or shall let to another for occupancy any dwelling, roominghouse, dwelling unit or rooming unit which does not comply with the minimum standards as provided by this article, as evidenced by a current certificate of compliance or interim certificate of compliance. All repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of these standards shall be performed and installed in a skilled manner and installed in accordance with the manufacturer’s installation instructions in order to allow the performance intended and anticipated by the standards to be achieved and must meet the criteria of the definition of "skilled manner" in Section 18-2. See Division 7 for Minimum Standards applicable to short term rentals.
DIVISION 7. SHORT TERM RENTAL

18-121 Compliance with article required.
No person shall establish, operate, or host guests in a short term rental which does not comply with the minimum standards as provided by this article, as evidenced by a current certificate of compliance or interim certificate of compliance. All repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of these standards shall be performed and installed in a skilled manner and installed in accordance with the manufacturer’s installation instructions in order to allow the performance intended and anticipated by the standards to be achieved and must meet the criteria of the definition of "skilled manner" in Section 18-2.

18-122 Minimum Fire Safety Standards:
(a) Smoke and carbon monoxide alarms are provided per the following:
   i. Photoelectric type smoke alarms are required in the immediate vicinity of sleeping rooms, inside each sleeping room, and on all floor levels including the basement. All newly installed smoke alarms must be hard wired into the buildings electrical system.
   ii. Smoke alarms in sleeping rooms of buildings constructed prior to 1994, may be of the 10-year photoelectric lithium powered tamper resistant type.
   iii. Outside each sleeping area in the immediate vicinity of the bedrooms. An additional detector shall be installed in each sleeping room that contains a fuel-burning appliance.
   iv. Carbon Monoxide alarms installed or replaced in a dwelling after July 1, 2005 must be directly wired to the building electrical service and have a battery backup.
   v. Existing single family dwellings and duplexes constructed prior to July 1, 2005 may use plug in style alarm with battery backup or battery power or may be hardwired.
(b) GFI Outlets are provided in the following areas:
   i. Bathrooms, garages and accessory buildings having a floor located at or below grade level, not intended as a habitable room and limited to storage. Work areas, outdoors, crawl spaces, unfinished portions or areas of the basement not intended as a habitable room. Kitchen, where the receptacles are installed to serve countertop surfaces and sinks and where the receptacles are installed within 6ft from the top inside edge of the bowl of the sink. Boathouses and bathtubs or shower stalls, where receptacles are installed within 6ft of the outside edge of the bathtub or shower stall and laundry areas.
(c) Every sleeping room is provided with a primary and secondary means of escape. A window meeting rescue and ventilation requirements can satisfy the secondary means of escape.
(d) Heating systems (fuel and wood) have been inspected at least once every two (2) years by a certified fuel service technician.
(e) Landings, decks, porches and balconies higher than thirty (30) inches from grade are provided with guards and intermediate rails spaced no more than four (4) inches apart. Stairs must be provided with graspable handrails.

18-123 Minimum General Standards:
(a) Appliances are operational and in good repair, and hot and cold potable water have been supplied.
(b) Guest rooms have been serviced and cleaned before each new guest.
(c) Refuse containers are available and emptied at least once each week or more frequently, if necessary.
(d) Swimming pools, recreational water facilities, and hot tubs are kept sanitary and in good repair.
(e) Sewage system and toilets function and are in good repair.
(f) Toxic cleaning supplies are properly labeled, safely stored and used according to the manufacturer’s directions.
(g) Guest rooms are free of any evidence of insects, rodents, and other pests.
(h) Provision of fire extinguishers as required by NFPA and Burlington Fire Department.
(i) Instructions for occupants regarding:
   i. Location and use of fire extinguishers
   ii. Emergency egress routes
   iii. 24 hour/7 days per week emergency contact information
(j) Current rental registration certificate posted inside and clearly visible to occupants.

ARTICLE IV. HOUSING DISCRIMINATION

18-200 Purpose.
As written.

18-201 Definitions.

(a) For the purpose of this article, "adverse housing action" means any of the following:

   (1) Refusal to rent;
   (2) Refusal to negotiate a rental;
   (3) Making a rental unit unavailable;
   (4) Changing of the terms, conditions, or privileges of a rental including adding or increasing rental charges;
   (5) Falsely representing that a rental unit is not available for a prospective tenant;
   (6) Refusal to permit reasonable changes or modifications at other than the landlord’s expense to a rental unit in order to render it suitable for occupancy by a handicapped person.

(b) For the purpose of this article, "rental unit" shall not include:

   (1) Dormitories or other housing provided by an educational institution including fraternities and sororities;
   (2) Dwellings which are directly or indirectly assisted or subsidized by a public agency or public monies for the purpose of making housing available for a particular group or classification of persons;
   (3) Housing provided for pious, charitable, or public purposes;
(4) Dwellings where the available space or facilities are inadequate to house a person and all minors under applicable occupancy standards;

(5) Dwelling where the available space or facilities are inadequate to house a person and all minors under applicable occupancy standards;

(6) **Short term rentals.**

(c) Notwithstanding the above, no dormitory or other housing provided by an educational institution, including fraternities and sororities, shall take an adverse housing action against any person because of the age, sexual orientation or handicap of the person.

(Ord. of 10-9-84; Ord. of 9-24-90)

18-202 – 18-301

As written.

18-302 Exemptions.

(a) This article shall not be applicable to single-family homes and duplexes.

(b) This article shall not be applicable to properties that meet all of the following requirements:

1. Land tract with ten (10) or fewer housing units;

2. A deed restriction making at least twenty-five (25) per cent of the housing units affordable to low-income tenant households; and

3. Located in United States Census Bureau tract that contains less than fifty (50) per cent home ownership.

(c) **This article shall not be applicable to short term rentals.**

(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07)

18-303 – 18-501

As written.

18-502 Applicability.

(a) This article shall be applicable to all rental properties subject to the Minimum Housing Code. In mixed commercial/residential buildings this article shall apply only to the residential portion of the building. This article shall not apply to owner-occupied portions of a multi-unit building.

(b) The following properties shall be exempt from meeting the requirements of this article:

1. Rental properties not rented between November 1 and March 31 of each year.
(2) New construction subject to and in compliance with the Energy Conservation Ordinance, B.C.O. sections 8-100 to 8-104

(3) Hotels, motels, tourist rooming houses, dormitories, hospitals, hospices and nursing homes.

(4) Buildings or apartments where heating costs are paid by owners of the rental properties.

(5) Short term rentals.

(Ord. of 3-24-97)

18-503 – 18-511

As written.
TO: Burlington Planning Commission  
FROM: Scott Gustin, Principal Planner & Zoning Division Manager  
Meagan Tuttle, Comprehensive Planner, Office of City Planning  
DATE: February 8, 2021  
RE: Non-conformities and zoning violations

Some members of the public, STR hosts, and a few Joint Committee members have expressed an interest in enabling existing, but unpermitted STR’s to continue, despite the outcome of the Committee’s decisions about the policy going forward. While it may appear to be a solution that balances competing policy interests, there are a few layers to this concept that are important to outline for the Committee:

- It conflates zoning violations and legal nonconformities, which are not afforded the same legal benefits, and
- Legal nonconformities are regulated by zoning, not the Minimum Housing Code.

**Basics of Nonconformities vs. Violations**

As a foundation for this discussion, it is important to revisit the difference between legal nonconformities and violations. Within the context of zoning, land uses, structures, or lots are either:

- **conforming** to the requirements and standards of the zoning ordinance currently in effect, sometimes referred to as “legal”; or
- **legally nonconforming**, meeting a previous requirement or standard that has since been changed sometimes referred to as “pre-existing legal nonconformity”; or
- **in violation** for operating in a way that is inconsistent with the standards currently in effect but without a valid zoning permit, or operating in a way that is inconsistent with the standards of the zoning ordinance and for which a nonconformity does not apply. This is sometimes referred to as “illegal”.

In zoning, a legally nonconforming use, structure, or lot is allowed to continue or be altered (24 VSA 4412 (7) within limits set forth in the Comprehensive Development Ordinance (CDO). However, it is a central premise of land use law that over time nonconformities should be eliminated such that all uses, structures or lots within a community become conforming to the requirements and standards of the zoning ordinance. Additionally:

- Legally nonconforming status is predicated on a use, structure or lot being legal at the time it first began, and that it has continued uninterrupted since that time.
- VT statute does not enable a community to force a nonconformity to come into compliance within a specified period of time (known as “amortization”), so as a result a nonconformity may continue in perpetuity as long as it continues uninterrupted.

**Regulating STRs To-Date**

Another important piece of background is how STRs have been regulated in Burlington to-date.

Most Short term rentals (STRs) presently operating in Burlington are doing so without a zoning permit. Some of those STRs are operating in a way that is inconsistent with the present standards and would not be able to get a zoning permit. Therefore, they are not operating legally, and as a result do not have a basis for being granted legal nonconforming status.
STRs are currently regulated in the CDO as either a “bed and breakfast” (owner-occupied STRs) or a “hotel/motel” (non owner-occupied STRs). Where a use is not specified in Appendix A, the CDO provides that the administrative officer apply a “best fit” approach. Such is the case with STR’s. While not a perfect reflection of STRs, this has been the practice since we first became aware of STRs operating in Burlington and it has been upheld by the DRB.

- Over the past 5 years, 29 STRs have been cited with notices of zoning violation (NOV) or warning letters, most of which have been resolved via issuance of a zoning permit by the DRB under the bed and breakfast standards.
- At least one non owner-occupied STR was issued an NOV for operating a hotel/motel without a zoning permit. That NOV was appealed to and upheld by the DRB.

**Allowing existing, unpermitted short term rentals**

Based on this background:

- To allow unpermitted STR’s to continue to operate as-is is not a matter of considering them to be a legally “nonconforming use”. To do so would instead require amnesty—or the creation of a specific regulation that permits by-right all of the STRs presently operating in Burlington.
- Granting amnesty is inconsistent with fair and equal treatment for STRs citywide. It disregards those STRs that have obtained zoning permits to-date—either as was required or as a result of an enforcement action—and precludes future STRs from being operated in the same way after the amnesty period.
- Granting amnesty creates a precedent for zoning violations to be cured through “forgiveness” rather than compliance with the standards, which is inconsistent with how zoning violations are resolved in all other circumstances.
- If we were to grant amnesty to currently operating unpermitted STRs, how do we justify it? Further, how would we do it, and how would we know specifically which STRs are affected? At what date would amnesty be established, and over what period of time would amnesty be granted?

Additionally, underlying this issue is a key question about what the Committee sees as the policy goal behind enabling Illegal STRs to continue.

**The interest in enabling existing, unpermitted STRs to continue, regardless of the policy outcome, is inconsistent with the Committee’s earlier reservations about the protections afforded to legal nonconformities.** Specifically, the Committee was concerned about recommending a more permissive STR policy because the rights afforded to non-conforming uses aren’t flexible enough to pare back (or amortize) the number of STRs if the community deems them to be too widespread. This essentially boils down to giving amnesty to zoning violations, while simultaneously precluding a path to legal non-conformities for STRs that may be established legally in the future.

**Chapter 18’s Minimum Housing Standards vs. CDO’s Zoning Standards**

Finally, the above noted concern about the inability to amortize zoning permits was a major factor in the staff’s recommendation for the Committee to consider using the Minimum Housing Code as the tool for regulating STRs. Staff was instructed at the last meeting to revise the existing STR proposal to move the bulk of the standards into the Minimum Housing Code.

The legally non-conforming provisions afforded to STR’s under zoning do not apply to rental registrations issued under the Minimum Housing Code. Therefore, if the Committee remains committed to this approach, there is not a mechanism for enabling either illegal STRs or legal non-conformities under Ch. 18.
The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

Burlington Planning Commission
Tuesday, February 23, 2021, 6:30 P.M.
Remote Meeting via Zoom

Draft Minutes

<table>
<thead>
<tr>
<th>Members Present</th>
<th>E Lee, A Montroll, H Roen, A Friend, J Wallace-Brodeur, Y Bradley</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Present</td>
<td>D White, M Tuttle, S Gustin, M O’Neil, K Sturtevant</td>
</tr>
<tr>
<td>Attendance</td>
<td>S Bushor, R Longe, A Magyar, D Agresta, C Wight, R Roman, Z Richards, S Whitman</td>
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</table>

I.  Agenda

Call to Order  Time: 6:32pm
Agenda  No Change.

II.  Chair Report

A Montroll  Has been almost a year since we’ve been meeting online. Thank you to staff, commission and public for continuing to join meetings.

III.  Director’s Report

D White  Planning staff continues to dedicate some time to COVID-19 Analytics Team. After elections next week, will be working on FY22 Budget & Work Plan.

IV.  Public Forum

Name(s)  Comment
No Comments.

V.  Public Hearing ZA-21-03: R-L Boundary at 925 North Ave.

Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation. Send communication from Commission encouraging Council support for conservation of the remainder of the property.

Motion by: H Roen  Second by: J Wallace Brodeur  Vote: Approved 5-1; YB opposed

Type: Public Hearing, Action  Presented by: M Tuttle

The Chair opened the public hearing at 6:40pm and closed it at 6:46pm with no public comment.

Discussion & Notes:
• Commissioner Roen requested a communication accompany the amendment to the Council expressing its support for action to conserve the remainder of the property, which has been a conservation priority for many years.
VI. Public Hearing ZA-21-04: Adaptive Reuse Definition

<table>
<thead>
<tr>
<th>Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation.</th>
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<tbody>
<tr>
<td>Motion by: A Friend</td>
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<tr>
<td>Type: Public Hearing, Action</td>
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<tr>
<td>The Chair opened the public hearing at 6:45pm and closed it at 6:53pm with no public comment.</td>
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</table>

VII. Public Hearing ZA-21-05: Parking Garage Illumination Standard

<table>
<thead>
<tr>
<th>Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation.</th>
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<tr>
<td>Motion by: A Friend</td>
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<tr>
<td>Type: Public Hearing, Action</td>
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<tr>
<td>The Chair opened the public hearing at 6:55pm and closed it at 6:55pm with no public comment.</td>
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Discussion & Notes:
- Commissioner Lee asked if this amendment would address issues like the YMCA lighting’s visible light bulbs, and expressed a concern that lighting standards need to be improved across the city with regard to screening and dark skies, including street lighting. Staff clarified the amendment does not address this, that a wholesale update to the lighting standards in the ordinance is on the list of future projects, and that street lighting is outside the purview of zoning.

VIII. Public Hearing ZA-21-06: Shoreline Property Setbacks & Buffer

<table>
<thead>
<tr>
<th>Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation.</th>
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<tr>
<td>Motion by: J Wallace Brodeur</td>
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<tr>
<td>Type: Public Hearing, Action</td>
</tr>
<tr>
<td>The Chair opened the public hearing at 7:10pm and closed it at 7:15pm with the following comments:</td>
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</table>
- S Bushor: Concerned 50’ max depth for no-mow zone is too close to the water’s edge. Encourage the Commission to consider whether 50’ is adequate; recommend 75’.

Discussion & Notes:
- S Gustin noted that 50’ is an existing buffer for wetlands, where the state’s requirements are more complex, so goal was to establish a revegetated area without requiring it of the whole property.
- Commissioner Roen expressed that definition of no-mow seemed to conflict itself, and would like to re-naturalize as much of the lake shore as possible. S Gustin noted that some plants need to be mowed in order to enable them to mature, while others should not be. Conservation Board was comfortable with this amendment.
- Z Richards of Conservation Board commented that the state feels that this amendment is really positive for redevelopment in the city, whereas the standards for new development are much more stringent.
- Commissioner Bradley expressed that it’s important to balance naturalization with the ability to see the lake from the property, so 50’ depth and the ability to annually mow is important.

IX. Open Space Protection Plan Addendum

<table>
<thead>
<tr>
<th>Action: None required</th>
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<tbody>
<tr>
<td>Motion by:</td>
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<tr>
<td>Type: Discussion</td>
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</table>

Discussion & Notes:
• R Roman notes that the Supplements Open Space Protection Plan and Climate Action Plan to enhance Nature Based Solutions to Climate Change. Focus on connections between citizens and natural areas, city departments, and across the landscape.
• S Whitman shared that the team is exploring NBS about both nature and people that will focus on protection, stewardship, and restoration across different types of land covers.
• Asking for help in spreading the word about a March 29 Summit to explore NBS for Burlington.
• J Wallace-Brodeur- excited about the initiative and excited to learn more about what individuals can do. New topic, but makes sense.

X. Commissioner Items

<table>
<thead>
<tr>
<th>Executive</th>
<th>Committee met before meeting for updates from staff on work that has been underway, as well as a preview on the workload anticipated for FY22.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance</td>
<td>No Report</td>
</tr>
<tr>
<td>Long Range</td>
<td>No Report</td>
</tr>
</tbody>
</table>

Next Meeting is Mar 9, 6:30pm as Joint Committee Meeting with Council Ordinance Committee.

XI. Minutes and Communications

Action: Approve the minutes and accept the communications

Motion by: y Bradley Second by: E Lee Vote: Approved unanimously

Minutes Filed: February 9, 2021
Communications Filed:
• In the agenda packet and posted online

XII. Adjourn

Adjournment Time: 7:35pm
Motion: H Roen Second: J Wallace-Brodeur Vote: Approved Unanimously
Re: Burton Corporation Applications 4C0174-6; 4C0358-3

Memorandum in Response to Burton Memorandum on Soil Testing

Laurie Smith et al. hereby respond to the memorandum filed by Burton on the subject of soil testing.

Burton’s basic argument is that the “I Rule” is designed to address soil contamination, and, if contamination is found, the I Rule is the proper avenue for responding to soil contamination. Therefore the Commission need not be provided the results of soil testing. See, e.g., p. 4 (“The law and Burton’s application provide sufficient assurances that any hazardous waste issues that arise will be addressed appropriately if and when they arise.”)

Two legal issues are raised by Burton’s position, neither of which its memorandum addresses.

First, this approach contradicts the Supreme Court’s application of Act 250. Act 250 requires that the Act 250 criterion be satisfied as part of the Act 250 proceeding, and prohibit basing an Act 250 permit upon assurance, such as the Burton Corporation has submitted, that the state regulatory statute process will take care of the problem if and when it arises. In re Hinesburg Hannaford, 2017 VT 106 ¶¶ 51-53, 2016 Vt. 118, 179 A.3d 727 (reversing Environmental Division’s grant of an Act 250 permit where Division lacked evidence that stormwater control swale would function to filter stormwater and instead relied on applicant’s assurance that, in the future, if the swale did not function properly, the NRB would require some other stormwater control method to ensure compliance with Act 250); In re SP Land Co., 2011 VT 104, ¶ 25, 190 Vt. 418, 35 A.3d 1007 (even where Rule 21 applies and a ruling on less than all criteria is authorized, “a permit may issue
only when positive findings of fact and conclusions of law have been made under all criteria and subcriteria”[emphasis in the original]).

Here, there is undisputed evidence that the overall site contains contaminated soils. See Applicant’s Exhibit 12. The unanswered questions include whether contaminants will be found at the precise locations where construction for this project will occur, whether construction will release them into the air or water, and, if so, whether the releases can be adequately mitigated.

Burton’s memorandum at pages 4, 5 and 6 asserts precisely what the Supreme Court has rejected. At page 4 Burton argues that if contaminated soils are found, “the I Rule mandates corrective actions ...‘to the maximum extent practicable...” At page 5 Burton argues that it has satisfied Criterion 1(B) because it will comply with the I Rule. At page 6 it argues that it has satisfied Criterion 9(K) because if any release occurs, “appropriate corrective actions would safeguard the water supply by operation of the I Rule process.”

Without data showing that, notwithstanding the known presence of contaminants on the site, the locations that will be disturbed during construction of this project do not contain those soils, the Commission cannot make the findings required under Criterion 1(B). This burden falls on the applicant. *In re Katzenbach*, Docket No. 124-9-17 Vtec, Decision on the Merits (Vt. Super. Ct, Env’l Div.)(Walsh, J.), January 2, 2019.

A second legal issue raised by Burton’s memorandum is the Natural Resource’s Board’s rules. Remediation of hazardous sites is accomplished by means of Corrective Action Plans. Corrective Action Plans must be approved of by the Department of Environmental Conservation pursuant to I Rule §§ 35-606 and 35-607. Burton’s memorandum repeatedly relies (pages 3, 4, 5 and 6) on the expected approval by DEC of
its remediation plans, *i.e.*, formal approval of its Corrective Action Plan. Obviously, that Plan does not yet exist, has not been submitted to DEC and has not been approved. Board Rules 19(A)-(D) require the Commission’s consent if the applicant seeks to proceed forward without the approval in hand and authorizes the Commission to delay the hearing until the Corrective Action Plan has been approved.

**Conclusion**

The Burton Corporation must submit to the Commission and the parties soil testing data before completion of the hearing on the merits; if the data shows that a Corrective Action Plan is needed, this matter should be continued until a Corrective Action Plan has been approved.

Date: February 24, 2021  
\(\text{\underline{/s/James A. Dumont}}\)  
James A. Dumont, Esq.  
Law Office of James A. Dumont, Esq. PC  
15 Main St./PO Box 229  
Bristol, VT 05443  
(802)453-7011  
dumont@gmavt.net
District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

CERTIFICATE OF SERVICE

I certify that I have today delivered a Memorandum in Response to Burton Memorandum on Soil Testing to all other parties to this case as follows:

- By Electronic Mail

The name and address of the party to whom the mail was addressed or personal delivery was made are as follows:

The Burton Corporation

c/o Justin Worthley, Mike Fialko-Casey, Eric Bergstrom
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justinw@burton.com;
MikeF@burton.com;
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Tyler Barnard, Paul Boisvert
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Chair, Selectboard/Chair, Planning Comm.
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TNewton@ccrpcvt.org

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Division for Historic Preservation
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jesse@ccavt.org
ACCD.ProjectReview@vermont.gov

Dated: 2/24/2021

/s/ Caroline Engvall
Caroline Engvall
Assistant to Counsel,
James A. Dumont, Esq.
dumont@gmavt.net
APPLICANT THE BURTON CORPORATION’S OPPOSITION TO SMITH ET AL.’S MOTION FOR ORDER REQUIRING SUBMISSION OF NOISE DOCUMENTATION

On February 10, 2021, Lawrence Smith, on behalf of 12 other individuals (the “Smith Opponents”) filed a Motion for an Order requiring Applicant The Burton Corporation (“Burton”) to produce the following eight categories of documents:

1. RSG design and calculations and “fit up” acoustical consultant design and calculations.

2. RSG survey data, meter files, recordings and field notes acquired during sound level monitoring at Higher Ground’s existing facility in South Burlington during a hard rock concert on August 17, 2019.

3. Project noise model (the CADNA model) for maximum recurring octave band and dBA hard rock concert sound levels starting from the design basis, and supporting assumptions, through specific model inputs for exterior and interior noise sources and noise attenuation of building elements, barriers, and other noise controls, propagation and comparison to existing background sound levels.

4. Project architect’s stamped plans and sections drawings addressing consultants’ noise control and fit-up requirements.

5. Engineering stamped calculations and drawings for HVAC, load-bearing capacity and requirements and roof modifications and wall modifications addressing consultants’ noise-control and fit-up requirements.

6. Renovation/fit-up noise controls with complete specifications including any structural and roof mass loading modifications, materials, baffling, curtains, barriers, absorbers, silencers, duct and equipment lagging, enclosures, doors and door seals.

7. New, modified and existing noise producing mechanical equipment specifications, including sound power level specifications and noise control packages.
8. Build-out design basis and sound power level assumptions and noise calculations for number and locations of people and vehicles making noise onsite during events for full built-out capacity.

The Commission should deny the Smith Opponents’ Motion. The letter from the Smith Opponents’ consultant—Robert Rand of Rand Acoustics, LLC—that the group uses to support its request (the “Rand Memo”) is based on a review of information not in the record and therefore cannot serve as a proper basis for the request. Moreover, the lion’s share of the Smith Opponents’ requests—specifically, Items 1, 4, 5, and 6—seek information that does not exist, and is irrelevant to the Commission’s review of Burton’s application. Most of the remaining requests—specifically, the requests in Items 3, 7, and 8—seek information already in the Smith Group’s possession. Indeed, most of it can be found in the November 4, 2020 Noise Assessment Burton submitted as Exhibit 9 to its application (the “Nov. 4 Noise Assessment”).

Finally, although the Smith Opponents’ Motion does not articulate any valid reason for requiring Burton to produce any additional information, Burton will voluntarily produce the information requested in Item 2. Burton also submits, for the record, a memorandum from its acoustics consultant, RSG (the “RSG Memo,” attached as Exhibit 1) responding to the critiques in the Rand Memo and correcting the minor reporting error in RSG’s prior noise assessments that Mr. Rand identifies.

I. The Smith Opponents’ request is based on a review of information not in the record and does not support their request.

In their Motion, the Smith Opponents rely primarily on the Rand Memo, arguing that Mr. Rand “reviewed the RSG reports and found that [RSG’s] noise predictions are contradicted by the limited data contained in the report,” that the “predictions fall below typical sound levels for rock concerts,” and that additional documents are “needed to arrive at an accurate understanding
of the likely noise impacts” of the Project. Smith Opponents Mot. at 3. But Mr. Rand’s Memo does not support the Smith Opponents’ broad request for more information.

First, Mr. Rand did not even review the correct noise assessment. In his Memo, Mr. Rand references reports prepared by RSG in connection with Burton’s local zoning permit application last year—see Rand Memo at 1 (listing reports dated April 20 and August 3, 2020)—and not the November 4, 2020 RSG report Burton has submitted to the Commission in connection with its application. See Nov. 4 Noise Assessment. That error is significant because the previous noise assessments are not in the record in this proceeding; they represent an earlier version of the Project submitted to the Burlington Development Review Board (“DRB”). The version of the Project described in the Nov. 4 Noise Assessment—which Mr. Rand does not appear to have reviewed, and which is the Project at issue here—represents the Project as conditioned by the DRB.

Second, as explained in the RSG Memo, it is simply not true that RSG’s “noise predictions are contradicted by the limited data contained in” its reports, as the Smith Opponents’ Motion states. Mr. Rand is correct that one of the tables in RSG’s reports (including the Nov. 4 Noise Assessment) contains what amounts to a transcription mistake,¹ but RSG has demonstrated that the error did not have any impact on its modeling, and Mr. Rand does not even attempt to explain how the error supports the Smith Opponents’ request for any of the information listed in its Motion.

¹ For a detailed description of the mistake, and a corrected table, please see RSG Memo at 3. In short, it appears that RSG’s reporting software mistakenly pulled center frequency data from each full octave run through its model instead of summing the three frequencies in each. The correct data was, however, run through the actual model RSG used to determine exterior sound levels.
And finally, Mr. Rand’s opinion that RSG’s interior sound level predictions “fall below typical sound levels for rock concerts,” Smith Opponents Mot. at 3, does not provide any reason for the Commission to require the production of additional information.\(^2\) If the Smith Opponents believe that RSG’s assumptions about interior sound levels are not valid, they can explain the basis for that belief. A simple disagreement about RSG’s interior noise assumptions does not support a request to produce additional, unrelated information.\(^3\) See RSG Memo at 3.

II. **Items 1, 4, 5, and 6 seek information that does not exist and is not relevant to the Commission’s review of Burton’s application.**

In Items 1, 4, 5, and 6, the Smith Opponents seek architectural and engineering drawings and specifications showing the actual “noise control” and “fit-up” methods Burton will use to achieve the noise reduction values reflected in RSG’s modeling. See Rand Memo at 1 (noting that “fit-up” details were not provided in RSG’s modeling). As explained in the RSG Memo, however, those materials do not exist, and in any event are irrelevant to the Commission’s review of this application. See RSG Memo at 3.

Final engineering of a Project typically does not take place until land use permits are secured. That makes sense because until those permits are secured and any relevant conditions are imposed, a developer does not know precisely what performance specifications it will be required to meet. Consistent with that usual process, Burton has not yet developed the final architectural and engineering plans or specifications requested in Items 1, 4, 5, and 6. It will

\(^2\) Moreover, had Mr. Rand reviewed the correct report, he might have noticed that RSG also ran a much higher interior sound level (106 dBA)—based on the L\(_{\text{max}}\) observed during its testing at the current Higher Ground location—through its modeling, undermining his critique that RSG should have used a higher value than 99 dBA.

\(^3\) In any event, as discussed below, although the Smith Opponents’ Motion does not provide any valid reason for the Commission to order production of additional data, Burton will voluntarily produce the empirical data on which it relied in arriving at its base interior sound levels—i.e., actual sound testing at a hard rock concert at Higher Ground’s current location—for the Commission’s consideration.
prepare those materials once the permit is issued—and any relevant conditions are imposed—and it knows precisely what acoustical performance standards it will be required to meet.

In the Nov. 4 Noise Assessment, RSG does provide a basis for its sound attenuation assumptions, but the precise methods by which Burton will achieve the required attenuation is not set in stone—see RSG Memo at 3—nor should it be. It is simply not relevant to the Commission’s review how Burton achieves the sound reduction required by its permits, only that it does. Therefore, the information requested in Items 1, 4, 5, and 6 is neither available nor relevant to the Commission’s review of Burton’s application.

III. The Smith Opponents already have all the information requested in Items 3, 7, and 8 to which they are entitled.

The Smith Opponents already have virtually all the information sought in Items 3, 7, and 8, and have had that information since at least the initiation of this proceeding, and in some instances for much longer. For example, the relevant raw model input data sought in Item 3 was provided to Mr. Smith in April 2020, well in advance of the Burlington DRB’s consideration of Burton’s application. Moreover, the Nov. 4 Noise Assessment—which Mr. Rand apparently has not reviewed—again provides that data and expressly describes the industry-standard modeling processed used by RSG. See Nov. 4 Noise Assessment at 15; Appendix B. Plainly, Mr. Rand and the Smith Opponents have everything they need to assess RSG’s modeling. Nonetheless, neither the Smith Opponents nor Mr. Rand have raised any concerns with either the model inputs or RSG’s modeling itself. Burton is not obligated to provide any additional information in response to Item 3.

The Nov. 4 Noise Assessment also contains the information sought in Items 7 and 8. Item 7 seeks sound power level specifications for noise producing mechanical equipment. The Nov. 4 Noise Assessment modeled all mechanical noise sources; the particular sound emission
figures used were from manufacturer data of representative equipment and have been provided at page 17, Table 2.  

Item 8 seeks the design basis and sound power level assumptions associated with the parking lot during full capacity events. The Nov. 4 Noise Assessment already provides this information at page 16–17, Table 2, and provides additional model input data in Appendix B. Sound power level assumptions for vehicles accessing the parking lot are calculated based on German standard RLS-90 through the Cadna A software. See RSG Memo at 3–4.

IV. Burton will voluntarily produce the information requested in Item 2, which validates the base interior sound levels used in its modeling.

As we discuss above, the Smith Opponents’ consultant takes issue with the interior sound levels RSG used in its modeling for a hard rock concert, noting—without providing any conflicting data—that in his “experience,” the 99 dBA figure RSG used is “well below typical loudest recurring sound levels during interior hard rock concerts.” Rand Memo at 1. Again, though, had Mr. Rand reviewed the correct report, he may have noticed that RSG also took into account maximum values of 106 dBA in its modeling, and found that the resulting exterior sound at the nearest adjacent residence would still fall within applicable limits. See RSG Memo at 3; Nov. 4 Noise Assessment at 24–25. Mr. Rand’s concerns, therefore, do not support the Smith Opponents’ request in Item 2 for additional noise monitoring data from Higher Ground.

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4 As discussed above, to the extent the request calls for equipment-specific documentation, that is irrelevant to the Commission’s review, which is concerned with noise mitigation, not engineering review. Again, as discussed above, it is immaterial how Burton achieves any required mitigation, only that it does achieve the standard—especially as design details are subject to change.
Nonetheless, while both the Smith Opponents and the Commission already have all they need to validate the conclusions of Burton’s application, Burton is willing to provide additional detail in support of RSG’s interior sound assumptions as requested in Item 2.

Dated at Burlington, Vermont this 25th day of February, 2021.

DUNKIEL SAUNDERS ELLIOTT
RAUBVOGEL & HAND, PLLC

By: ________________________________

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Attorneys for the Applicant
MEMO

TO: Justin Worthley
FROM: Eddie Duncan, INCE Bd. Cert.
CC: Brian Dunkiel, Esq.
DATE: February 25, 2021

SUBJECT: Response to Robert Rand’s letter to James Dumont regarding his noise review of Burton Snowboard’s Hub Project

This memorandum is in response to a letter\(^1\) from Robert Rand to James Dumont regarding Mr. Rand’s review of RSG documents discussing a noise assessment of Burton Snowboard’s Hub Project (“Project”).

In his letter to Mr. Dumont, Mr. Rand discusses “discrepancies” he found in an RSG report titled, “Burton Snowboards & Higher Ground Hub Project, Noise Assessment,” April 20, 2020. It is important to first note that the referenced report is not the noise assessment report that was provided with the Hub Project’s Act 250 application. With the Act 250 application, RSG provided a report titled “Burton Snowboards & Higher Ground Hub Project, Act 250 Noise Assessment,” November 4, 2020 (“Act 250 Noise Assessment”). That is, the documents Mr. Rand has reviewed are not the documents related to noise impacts that were submitted with the Project’s Act 250 application. Nonetheless, we provide responses to comments raised by Mr. Rand. Specifically, this memorandum addresses:

- Modeled interior octave band sound levels,
- Modeled overall sound levels of a hard rock concert,
- Building transmission loss values, and
- Parking lot noise modeling.

**Modeled Interior Octave Band Sound Levels**

Mr. Rand correctly points out that the Z-weighted sound levels reported by full octave band in Table 2 of the report he reviewed do not add up to the total interior level that is referenced in the same table. If the full octave band sound levels are A-weighted and logarithmically summed, the total value should equal the overall sound level reported in

the table, but as reported, they do not. This is a reporting mistake that does not change the reported model results or the conclusion of the assessment. The sound level that was input into the model was entered in by 1/3 octave bands and when the input data was exported from the model for reporting purposes, the table only pulled the sound level from the 1/3 octave band that matches the center frequency of each full octave. The 1/3 octave bands that were used in the model should have been summed when reporting the full octave band sound levels that were used in the model. This is illustrated in Table 1 below, along with the correct full octave band values that were modeled. Again, this is strictly an error in reporting the input into the model and does not affect the model results or conclusions that were previously reported.

**TABLE 1: MODELED INTERIOR SOUND PRESSURE LEVELS BY 1/3 AND 1/1 OCTAVE BANDS**

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Reported Octave Band Sound Levels</th>
<th>Hard Rock Concert Modeled 1/3 Octave Band Sound Levels</th>
<th>Actual Modeled Full Octave Band Sound Levels</th>
<th>Adjacent Spaces During Hard Rock Concert Modeled 1/3 Octave Band Sound Levels</th>
<th>Actual Modeled Full Octave Band Sound Levels</th>
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</table>

**Total A-weighted Sound Level**

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<th>Report</th>
<th>Modeled</th>
<th>Hard Rock Concert Modeled 1/3 Octave Band Sound Levels</th>
<th>Actual Modeled Full Octave Band Sound Levels</th>
<th>Adjacent Spaces During Hard Rock Concert Modeled 1/3 Octave Band Sound Levels</th>
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<td>99</td>
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<td>86</td>
<td></td>
</tr>
</tbody>
</table>
Modeled Overall Sound Levels of a Hard Rock Concert

The error in the reported interior sound levels that were modeled is the only discrepancy that Mr. Rand discusses in his letter. The other issue that Mr. Rand raises is not a discrepancy, but rather a disagreement. Mr. Rand contends that 99 dBA is below the sound levels during an interior hard rock concert. As discussed in the Act 250 Noise Assessment, these are the levels that were actually monitored during a hard rock concert at Higher Ground on August 17, 2019. Footnote 11 of the Act 250 Noise Assessment on page 17, which Mr. Rand didn’t review, states:

The hard rock music was a moderately consistent source of sound with the quietest 10% (L90) of music at 95 dBA and the loudest 10% (L10) of music at 101 dBA. The Lmax for one second during the evening was 106 dBA. While there were brief periods when the interior sound level exceeded 99 dBA, the 99 dBA is representative of the diffuse field (where the sound pressure is nearly the same around the room, except near the sound source) that would impinge on the building envelope while music is being played, and is therefore an appropriate value to use in modeling breakout noise through the structure.

Furthermore, the Act 250 Noise Assessment discusses what the difference in the projected sound levels would be if the Lmax from the hard rock concert, 106 dBA, was used in the model. As such, Mr. Rand’s concerns about the overall interior sound levels that were modeled is not a discrepancy, but either a misunderstanding based on the fact that he did not review the Act 250 Noise Assessment or a disagreement about what interior sound level should have been used, even though the interior sound levels that were used were actually measured at a concert at Higher Ground.

Building Transmission Loss Values

In the letter, Mr. Rand requests “RSG design and calculations and “fit-up” acoustical consultant design and calculations.” RSG did not design any fit-up, partition, or ceiling assemblies as part of the Act 250 Noise Assessment. Rather, an acoustical specification for the exterior walls and ceiling/roof assembly is provided in Section 5.3 of the report in the form of transmission loss values. These are the specifications that the final design of the building will need to meet in order for the model results to hold true. In addition, to those specifications, the modeled transmission loss values of other building elements are provided in Appendix B, Table 6.

Parking Lot Noise Modeling

Mr. Rand also requested, “Build-out design basis and sound power level assumptions and noise calculations for number and locations of people and vehicles making noise onsite during events for full build-out capacity.” This information is summarized in the Act 250 Noise Assessment. Section 5.2, page 16, discusses the sound emissions from people socializing in the outdoor lounge area, and the sound from vehicles accessing the parking lot during and after a concert event. The sound power level of the outdoor lounge and the vehicles in the parking lot are provided in Table 2 on page 17. The sound
power level of the 100 vehicles accessing the lot during a concert and the 500 vehicles accessing the lot after a concert were calculated based on those number of vehicles per the German standard RLS-90 as implemented in the sound propagation modeling software Cadna A. Additional information on Cadna A can be found in the Act 250 Noise Assessment in Section 5.1, and the model input data is provided in Appendix B.
I, Grace Grundhauser, certify that on February 25, 2021, I served copies of the Memorandum in Opposition to Smith Request for Noise Data and associated exhibit on behalf of the Burton Corporation to the service list below by the delivery method noted:

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Harris Roen
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harris@roen.net

Mark Furnari
mark.furnari@gmail.com

Dated at Burlington, Vermont, this 25th day of February, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal
February 19, 2021
Thomas A. Little, Esq.
Chair

District 4 Environmental Commission
NRB.Act250Essex@Vermont.gov

Aaron Brondyke, State Coordinator
aaron.brondyke@vermont.gov

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

Dear Chairman Little and Coordinator Brondyke:

Thank you for the opportunity to provide these comments for the Act 250 District Commission’s consideration.

South Burlington Fire District #1 (SBFD#1) is a municipal corporation within South Burlington which under a Prudential Committee (PC) manages functions of town government that either are not available throughout the entire town or are better administered by a distinct, special-purpose entity. In our case, this includes a drinking water system that serves more than 80 municipal connections and various landholdings such as a green, basketball court, playground, parking lots, and beach access points.

SBFD#1 is also known as Queen City Park (QCP), which is zoned under the South Burlington Land Development regulations as the Queen City Park District. The purpose of this regulation is to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood to promote the area’s historic development pattern.

On January 13, 2021, SBFD#1 submitted a petition for party status to ensure the ongoing viability of our high quality water source. In the process of reviewing the proposed project the presence of several sources of toxic contamination on the project site have come to light. The VT Agency of Natural Resources has required the project applicant to conduct an investigation into the nature of the contamination, and to fill in crucial gaps in that information. That process is ongoing.

At the February 16, 2021, Prudential Committee meeting of SBFD#1, the PC voted to submit further comment to the District Commission regarding the protection of the SBFD#1 assets from the impacts that will likely result from the approval of the Burton project. These assets include:

- 1.35 acre parcel comprised of a green, basketball court, play structures, and 2 parking lots
- .26 acre parcel that includes a lake overlook and stairway access to Lake Champlain.
- .10 acre parcel that provides access to Lake Champlain
• .41 acre parking area along Central Ave.
• 14 acre parcel of largely wooded land with community garden and community firehouse
• .25 acre parcel that connects SBFD#1 to Red Rocks Park including the drinking water well and all associated equipment.

The SBFD#1 recognizes that this amended application should have been filed by the date of the Prehearing Conference. However, the SBFD#1 acts through the PC which takes time to meet and consider actions. Also, it has not been clear whether as a municipal body we need to make a showing to qualify for party status. NRB Rule 6(C) allows extensions of time where the extension would not delay or disrupt the Commission's proceedings. Therefore we ask for permission to make this late filing and also to submit witnesses at the hearing to provide evidence about our standing to raise these issues. We hereby name Sharon Behar and Stephen Caflisch as our designated representatives for the hearing on March 10th. The delay will have no effect on the District Commission's schedule. Other parties are already raising these issues.

OVERVIEW:

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own green, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the green. The houses are close together and close to the street, creating a dense and closely connected residential neighborhood.

This project as proposed threatens the character of our neighborhood and will have a harmful impact on our community assets and quality of life. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, on SBFD#1 property. There is currently no enforceable way to prevent attendees to this venue from entering SBFD#1 in the Burton project application. Adding numerous visitors on warm summer nights is likely to overburden the Fire District and damage our assets both before and after concerts. This impact will be worsened substantially by the lack of adequate parking at the venue.

We are asking that enforceable conditions be attached to any permit approval by the District Commission to specifically address and mitigate the additional concerns expressed below.

The Impact of Insufficient Parking

Insufficient parking at the venue will have numerous adverse effects on SBFD#1 properties, including parking lots, as well as on community members using and seeking to access SBFD#1 properties.
1. The proposed venue has 426 parking spaces for shows. The Federal Highway Administration has found that a reliable average number of persons per vehicle at performance events are between 2.2 and 2.8, which could mean up to 680 parking spaces are needed, on average, just for the sold out performance events. Plus there will be staff vehicles and show crew vehicles, and vehicles of employees of Higher Ground, Burton, the Talent Skate Park and the Cafés.

2. There are no public municipal parking lots available for concert attendees, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is Central Avenue, which is the sole access road to the SBFD#1. Many patrons who cannot find parking at the venue (or who anticipate they will not find parking at the venue) will undoubtedly travel into SBFD#1, and some will park in our community parking lots, thus reducing the availability of the lots for QCP residents and increase the cost of managing and maintaining the lots. Others will park on the streets. Still others will need to turn around and exit because they cannot find parking in the neighborhood.

3. Concertgoers seeking parking in Queen City Park, whether in SBFD#1 parking lots or on the streets, will cause congestion and dangerous conditions for community members, including those using or seeking to access SBFD#1 property.

4. The congestion and dangerous conditions will impair access by emergency vehicles to the neighborhood, including access to deal with emergencies on SBFD#1 property.

5. Patrons who park in QCP due to the lack of adequate parking at the venue will also use other SBFD#1 assets, worsening the impacts discussed in the next section and increasing management and maintenance expenses for the District.

**Impacts of Concert Goers**

Even if the Burton parking lot suffices and there are no cars parked in our parking lots, the impacts will be severe. Undoubtedly, concert goers will filter into SBFD#1 pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the SBFD#1 assets and potentially create safety issues, both of which will impact our ability to manage and maintain these assets.

The SBFD#1 green is 1,100 feet from the proposed venue. Concert attendees will use the green and the associated equipment, as well as the park and beach access points, both before and after concerts. This project will negatively impact our resident’s ability to enjoy our community assets. Additionally, increased use by non-resident concert goers of our SBFD#1 community green, parking areas, and beach access will result in increased litter, and wear and tear, which will dramatically degrade the aesthetics of these areas which we must manage and collect taxes to
maintain. This increased use will also cause congestion that will impact our community’s use and enjoyment of these assets.

Summary

There are simply no enforceable components of Burton/Higher Ground’s plan that ensure the protection of the SBFD #1 assets. It is critical that effort be made by Burton/Higher Ground and the Commission to ensure that the SBFD#1 and property are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to this currently not-heavily-trafficked area, which will undoubtedly result in an increase of vehicle traffic and patron usage of our assets attributable to Higher Ground events. The SBFD#1 property could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate either before or after events.

In addition to the protections for our drinking water source that we previously submitted, we request that as part of any approval of this project, the Commission impose enforceable conditions of approval that protect the SBFD#1 assets from the management and maintenance impacts of this project and additionally protect this municipality from all potential disturbances caused by this proposed development. We request that if the Commission approves this application they include conditions to: restrict venue size and hours of operation; establish an enforceable traffic management and parking plan that prevents venue attendees from utilizing SBFD#1 assets; require the venue to provide a security officer accessible to SBFD#1 before, during, and after all events to address any venue attendee impacts on SBFD#1 assets; require Burton to purchase, install and maintain any signage needed to direct attendees or to protect SBFD#1 assets; and any other conditions to protect the character and assets of SBFD#1.

Thank you again for your consideration of and potential action on behalf of our concerns and supporting comments.

Sincerely,

/s/ Jed Lowy
SBFD#1 PC Chair
South Burlington Fire District #1
C/O Mandy McDermott
5 Pine Place
South Burlington, VT 05403
SBFD#1 RESPONSE TO BURTON MEMORANDUM REGARDING CONSIDERATION OF SOIL TEST RESULTS, dated Feb. 10, 2021

In this memorandum, Burton alleges that the issues regarding soil contamination on the site of the proposed development are entirely covered by DEC’s application of the IRule, and not under jurisdiction of Act 250 review. To a large extent, we agree with this. But there are specific instances in which this is not the case, and there are important considerations for review in this proceeding.

In general we agree that any prior contamination that will not be disturbed by this project is not subject to review here. But there are several areas where disturbances by this project have the potential to enhance any threat of contamination off site, and potentially threaten the SBFD#1 water supply.

1. According to the attached document, prior owners utilized a trench, located at the northwest corner of the property, for disposal of etching waste. Among other materials, this contained chromate, a known hazardous material. While there is no record, we also know that the use of chromates in the etching process was often facilitated with PFAS materials. PFAS compounds were not recognized at that time, or even at the time of the most recent site assessment, as representing a significant hazard, but we know better now. Both the chromates and the potential PFAS represent materials of concern for the SBFD#1 water supply.

   It is not known precisely where this pit was located. But we do see that the current proposal includes a stormwater pond approximately in the same location. This is not currently part of the review plan being undertaken by Burton under the IRule. This may happen at a future date. But in any case, construction and operation of this stormwater pond or associated drainage swales, etc., could, we believe, aggravate a previously dormant contamination site.

2. There is potential for other work on this project to significantly affect contaminated soils. We know there were activities inside the building, such as accidental or deliberate spills and inappropriate use of floor drains, that have left a legacy of contamination under the floor. If there is digging in these areas, that activity has the potential to mobilize toxins. This may be addressed under the IRule, depending on details of the current or subsequent site study. The study proposal approved by DEC does not provide specificity about sample locations, or about follow-up in a second phase of that review. The lack of specificity makes it impossible
to know with any certainty that this project will not cause further harm. It’s worth pointing out that the separation of the site evaluation into a phase one and later phase two was initiated by Burton’s own contractor, inevitably stretching out their time frame.

3. The site review plan under the IRule does not include any further characterization of groundwater flow. This is crucial, especially given the highly permeable nature of the sandy soils and the fractured bedrock underneath.

In its memorandum, Burton acknowledges that these are potential concerns. We concur with this assessment. We also agree that there is potential that a full site study under DEC’s application of the IRule could manage these concerns adequately. But the burden of proof here is in the hands of the applicant. All they can say at this point is that there is the potential that we don’t have a problem. At this point, we don’t have results of the first round of sampling. We don’t know what will be required for or found from the anticipated second round. And we certainly don’t have any way to know what kind of remediation will be required. All of this directly impacts what will or should be done as part of this project. We maintain that these concerns do fall under Act 250 review for this project, and until these matters are settled, there is no way Burton can meet its burden under Act 250.
STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION

Act 250 Land Use Permit Application )
#4C0174-6 & 4C0368-3 )
The Burton Corporation, Burlington )

CERTIFICATE OF SERVICE

I, Stephen Crowley, certify that on February 25, 2021, I served copies of the SBFD#1 RESPONSE TO BURTON MEMORANDUM REGARDING CONSIDERATION OF SOIL TEST RESULTS and associated exhibit on behalf of the South Burlington Fire District#1 to the service list below by the delivery method noted:

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General Electric
Armament and Electrical Systems Department

EPA ID # VTD 000649780

Potential Hazardous Waste Site
Preliminary Assessment

December 1985

Waste Management Division

Department of Water Resources

Vermont Agency of Environmental Conservation
The General Electric Armaments and Electrical Systems Department (G.E.) Plating Shop is located on Industrial Parkway, Burlington, Vermont. The building is located in an industrial park, developed by the Greater Burlington Industrial Corporation in 1961. The building known as G.E. Building #41 or the Plating Shop, was leased by G.E. from 1962 until 1985, when G.E. purchased it from GBID.

The plating shop site is bounded by the Vermont Railroad right of way, a 35 foot deep ravine directly to the east; by the former Hayward Taylor building, recently purchased by G.E. to the north; by the Edlund Company to the west, across Industrial Parkway; and by a wooded area across Central Avenue, South Burlington to the south.

The plating shop site is situated on an area of unconsolidated lacustrine deposits. The soils in the area are classified sandy and permeable by the USDA. The underlying bedrock, known as the Monkton Quartzite, is predominantly red quartzite and dolomite. Approximately 1/4 mile to the southwest is Red Rock Park, so named for extensive outcropping of the Monkton Quartzite.

The site is located approximately 1/4 mile from the north shore of the Shelburne Bay area of Lake Champlain. Surface water
drains into Potash Brook to the east, which flows south westward into Lake Champlain at Shelburne Bay.

Interviews with employees were conducted during a site visit and perimeter survey on December 17, 1985 by Tom Moye and Bill Barry of the Vermont Agency of Environmental Conservation. The plating shop began operations in 1962 as a sheet metal and plastics assembly shop, where re-entry pods for missiles were assembled.

Industrial processes at the Plating Shop were originally sheet metal forming, compression molding of plastics, metal finishing and painting. The original building occupied some 65,000 square feet, and a 20,000 square foot addition was completed in 1979 to house a wiring and electrical assembly operation. The facility now assembles and finishes pods for armament systems, and does heat treating and fusion welding of aluminum as well as assembly and spray painting.

The present processes at the plating shop generate acidic, caustic, and chromate wastes. This waste is transported in drums, to the main plant on Lakeside Avenue. Occasionally it is held temporarily in a 1,000 gallon holding tank on site. Aside from this holding tank, no waste is stored at the facility. Spray painting operations utilize a continuous spraywash for
emission control. This water is continuously recycled and changed at 6 month intervals, with water skimmings and sludges transported to Lakeside Avenue in drums for storage.

Trichloroethylene (TCE), freon TMS, and alcohols are used for degreasing and are sent in drums to Lakeside Avenue for storage. On an annual basis RCRA files show the following wastes generated at the plating shop facility:

<table>
<thead>
<tr>
<th>Solvents</th>
<th>3,000 kg/yr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corrosive Liquid</td>
<td>870 kg/yr</td>
</tr>
<tr>
<td>Caustic Solids</td>
<td>900 kg/yr</td>
</tr>
<tr>
<td>Paint Sludges</td>
<td>500 kg/yr</td>
</tr>
<tr>
<td>Waste Oils</td>
<td>600 kg/yr</td>
</tr>
</tbody>
</table>

In 1981 General Electric submitted a CERCLA 103c notification to EPA reporting the onsite disposal of 1,200 gallons of etching solution during 1970. A 600 gallon tank used in etching aluminum was emptied into a 30' X 5' X 3' ditch at the north side of the property. The solution was spread over ferrous ammonium sulfate, then covered with lime, and the ditch filled with soil. This was done according to recommendations made by the G.E. laboratory, because the waste treatment tank at Lakeside Avenue was being repaired. When questioned during the site visit in December 1985, plant personnel stated that the tank
was emptied only once and the figure reported should have been 600 gallons rather than 1,200 gallons.

General Electric laboratory records indicate that the etching solution included 30 grams/litre of sodium dichromate and 3 grams/litre of sulfuric acid, but did not give a complete analysis of the material poured into the ditch. The location of this ditch is now under the asphalt drive into the shipping and receiving yard at the northwest corner of the plant at the fence line surrounding the facility.

Homes near the site north of the Burlington City boundary are served by the Champlain Water District. A 210 foot deep bedrock well that serves 75 homes in the Queen City Park area of South Burlington is located 1050 feet to the southwest of the plating shop. Red Rocks Park, a picnic and recreational area owned by the City of South Burlington, is also located within 1/4 mile to the southwest.

Based on the information collected for the preliminary assessment, it is recommended that a site inspection be conducted at the General Electric Plating Shop based on the following:

* Notification of hazardous waste disposal (form 8900-1).
* Unknown composition of etching solutions dumped on site.
* Potential groundwater contamination.
*Proximity of bedrock well serving as a municipal water supply for 75 homes.

*No sampling of nearby well for chromium

Site inspection should include water sampling of the well, and surface water of Potash Brook. Although this site inspection has been given low priority due to the small quantity of hazardous waste disposed of on only one occasion, the nearby municipal well serving as a drinking water supply must be considered.

BB/11
G.E. Plating Shop References

VT AEC Air and Solid Waste Industry Files

VT AEC Ground Water Management
   APA Files, South Burlington

USGS Topographic Map 15 minute series
   Burlington Quadrangle revised 1972

VT AEC Waste Management RCRA Files
Report of Inspection - Brian Fitzgerald 12/4/84

EPA Form 8900-1 Initial Notification
   of Hazardous Waste Disposal

Perimeter Survey and Facility Inspection 12/17/85 Bill Barry
   Tom Moye, VT AEC; Fred Lugano and Don Stewart, G.E. A & ESD

VT aerial photos 62 H 14 227
   62 H 14 228
POTENTIAL HAZARDOUS WASTE SITE
PRELIMINARY ASSESSMENT
PART 1 - SITE INFORMATION AND ASSESSMENT

II. SITE NAME AND LOCATION

<table>
<thead>
<tr>
<th>General Electric Plating Shop</th>
<th>Industrial Parkway</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burlington</td>
<td>Chittenden</td>
</tr>
</tbody>
</table>

III. RESPONSIBLE PARTIES

<table>
<thead>
<tr>
<th>General Electric A &amp; ESD</th>
<th>Lakeside Avenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burlington</td>
<td></td>
</tr>
</tbody>
</table>

IV. CHARACTERIZATION OF POTENTIAL HAZARD

<table>
<thead>
<tr>
<th>Site Status: Active</th>
<th>Inactive</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes 1962 - Present</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Description of substances possibly present, known, or alleged:
Solution which included sodium dichromate and sulfuric acid used in etching aluminum, was poured over ferrous ammonium sulfate.

Potential groundwater contamination could migrate to a municipal well. Contamination could impact surface water in Potash Brook.

V. PRIORITY ASSESSMENT

<table>
<thead>
<tr>
<th>Priority for inspection:</th>
<th>A. High</th>
<th>B. Medium</th>
<th>C. Low</th>
<th>D. None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of hazards</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

VI. INFORMATION AVAILABLE FROM

<table>
<thead>
<tr>
<th>Tom Moye</th>
<th>VT AEC Waste Management Division</th>
<th>802-828-3395</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Barry</td>
<td>VT AEC Waste Mgmt. Div.</td>
<td>802-828-3395</td>
</tr>
</tbody>
</table>
### II. WASTE STATES, QUANTITIES, AND CHARACTERISTICS

<table>
<thead>
<tr>
<th>01 PHYSICAL STATES (Check all that apply)</th>
<th>02 WASTE QUANTITY AT SITE (All estimates of waste quantities must be independent.)</th>
<th>03 WASTE CHARACTERISTICS (Check all that apply)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. BOUND</td>
<td>300-1200 gal.</td>
<td>X. TOXIC</td>
</tr>
<tr>
<td>B. POWDER, FINES</td>
<td></td>
<td>X. E. SOLUBLE</td>
</tr>
<tr>
<td>C. SLUDGE</td>
<td></td>
<td>X. HIGHLY VOLATILE</td>
</tr>
<tr>
<td>D. OTHER</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NO. OF DRUMS:**

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>SUBSTANCE NAME</th>
<th>01 GROSS AMOUNT</th>
<th>02 UNIT OF MEASURE</th>
<th>03 COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SLU</td>
<td>SLUDGE</td>
<td>600 gal.</td>
<td></td>
<td>Etching Solution</td>
</tr>
<tr>
<td>OLW</td>
<td>OLY WASTE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOL</td>
<td>SOLVENTS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PSD</td>
<td>PESTICIDES</td>
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<td></td>
</tr>
<tr>
<td>OCC</td>
<td>OTHER ORGANIC CHEMICALS</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>X. IOC</td>
<td>INORGANIC CHEMICALS</td>
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<tr>
<td>X. ACD</td>
<td>ACIDS</td>
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<td>BAS</td>
<td>BASES</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>MES</td>
<td>HEAVY METALS</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

### IV. HAZARDOUS SUBSTANCES

(See Appendix for most frequently used CAS Numbers)

<table>
<thead>
<tr>
<th>01 CATEGORY</th>
<th>02 SUBSTANCE NAME</th>
<th>03 CAS NUMBER</th>
<th>04 STORAGE/DISPOSAL METHOD</th>
<th>05 CONCENTRATION</th>
<th>06 MEASURE OF CONCENTRATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>IOW</td>
<td>Ferrous Ammonium Sulfate</td>
<td>1004-589-3</td>
<td>SI</td>
<td>UNK</td>
<td></td>
</tr>
<tr>
<td>ACD</td>
<td>Sulfuric Acid</td>
<td>7766493-3</td>
<td>SI</td>
<td>3g/l.</td>
<td></td>
</tr>
<tr>
<td>MES</td>
<td>Sodium Dichromate</td>
<td>1058801-9</td>
<td>SI</td>
<td>30g/l.</td>
<td></td>
</tr>
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</table>

### V. FEEDSTOCKS

(See Appendix for CAS Numbers)

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>01 FEEDSTOCK NAME</th>
<th>02 CAS NUMBER</th>
<th>CATEGORY</th>
<th>01 FEEDSTOCK NAME</th>
<th>02 CAS NUMBER</th>
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</thead>
<tbody>
<tr>
<td>FDS</td>
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<td>FDS</td>
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<td>FDS</td>
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</tr>
</tbody>
</table>

### VI. SOURCES OF INFORMATION

1. Notification of Potential Hazardous Waste Site Form 8900-1
2. State of Vermont A.E.C. RCRA Files (G.E. Plating shop)
3. Interview with G.E. Personnel 12-17-85
G.E. acknowledged the disposal of 600 gallons of etching solution on site in a ditch at the northwesterly corner of the site. A municipal well owned by the S. Burlington Fire District is 1050 feet from this site.

Potash Brook, a tributary of Lake Champlain is located 800 feet east of the disposal site.

Etching solution was poured into a ditch 30 feet long, 3 feet wide and 5 feet deep.

G.E. acknowledged the disposal of 600 gallons of etching solution on site in a ditch at the northwesterly corner of the site. A municipal well owned by the S. Burlington Fire District is 1050 feet from this site.
II. HAZARDOUS CONDITIONS AND INCIDENTS

01 □ J. DAMAGE TO FLORA
04 NARRATIVE DESCRIPTION
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED

01 □ K. DAMAGE TO FAUNA
04 NARRATIVE DESCRIPTION
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED

01 □ L. CONTAMINATION OF FOOD CHAIN
04 NARRATIVE DESCRIPTION
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED

01 □ M. UNSTABLE CONTAINMENT OF WASTES
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED
03 POPULATION POTENTIALLY AFFECTED: unknown
04 NARRATIVE DESCRIPTION

Waste etching solution were poured into a 30 ft. long by 5 ft. deep by 3 ft. wide ditch.

01 □ N. DAMAGE TO OFFSITE PROPERTY
04 NARRATIVE DESCRIPTION
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED

01 □ O. CONTAMINATION OF SEWERS, STORM DRAINS, WATERS
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED
04 NARRATIVE DESCRIPTION

01 □ P. ILLEGAL/UNAUTHORIZED DUMPING
04 NARRATIVE DESCRIPTION
02 □ OBSERVED (DATE: ___________) □ POTENTIAL □ ALLEGED

05 DESCRIPTION OF ANY OTHER KNOWN, POTENTIAL OR ALLEGED HAZARDS

III. TOTAL POPULATION POTENTIALLY AFFECTED: 262

IV. COMMENTS

The direction and extent of contamination potentially transported by groundwater are unknown. A municipal well and Potash Brook are potentially nearby receptors.

V. SOURCES OF INFORMATION
(Explain in detail, e.g., "information provided by local agency")

1. Notification of potential hazardous waste site EPA form 8900-1
2. State of VT AEC RCRA Files, GE Plating Shop
3. Interview with GE personnel 12/17/85
Person Required to Notify:
Enter the name and address of the person or organization required to notify.

| Name: General Electric Company - A&ESD |
| Street: Lakeside Avenue |
| City: Burlington | State: VT | Zip Code: 05402 |

Site Location:
Enter the common name (if known) and actual location of the site.

| Name of Site: General Electric Company - A&ESD |
| Street: Industrial Parkway |
| City: Burlington | County: Chittenden | State: VT | Zip Code: 05402 |

Person to Contact:
Enter the name, title (if applicable), and business telephone number of the person to contact regarding information submitted on this form.

| Name (Last, First and Middle): Aswad, W.N., Manager - Mfg. Engrg. |
| Phone: (802) 657-6034 |

Dates of Waste Handling:
Enter the years that you estimate waste treatment, storage, or disposal began and ended at the site.

| From (Year): 1970 | To (Year): 1971 |

Waste Type: Choose the option you prefer to complete.

| Option 1: Select general waste types and source categories. If you do not know the general waste types or sources, you are encouraged to describe the site in item 1—Description of Site. |

| General Type of Waste: Place an X in the appropriate boxes. The categories listed overlap. Check each applicable category. |
| Source of Waste: Place an X in the appropriate boxes. |


| Option 2: This option is available to persons familiar with the Resource Conservation and Recovery Act (RCRA) Section 3001 regulations (40 CFR Part 261). |

Specific Type of Waste: The EPA has assigned a four-digit number to each hazardous waste listed in the regulations under Section 3001 of RCRA. Enter the appropriate four-digit number in the boxes provided. A copy of the list of hazardous wastes and codes can be obtained by contacting the EPA Region serving the State in which the site is located.

| Code: F019 |

| Code: |
| Code: |
| Code: |

9/12/1981
**Waste Quantity.**

Place an X in the appropriate boxes to indicate the facility types found at the site.

In the "total facility waste amount" space, give the estimated combined quantity (volume) of hazardous wastes at the site using cubic feet or gallons.

In the "total facility area" space, give the estimated area size which the facilities occupy using square feet or acres.

### Facility Type
- **1.** Piles
- **2.** Land Treatment
- **X.** Landfill
- **3.** Tanks
- **4.** Impoundment
- **5.** Underground Injection
- **6.** Drums, Above Ground
- **7.** Drums, Below Ground
- **8.** Other (Specify)

*Estimated amount, based on records or recollections of individuals available at this time.*

### Known, Suspected or Likely Releases to the Environment:

Place an X in the appropriate boxes to indicate any known, suspected, or likely releases of wastes to the environment.

- **( )** Known
- **( )** Suspected
- **( )** Likely

None based on information available at this time.

*Note: Items 1 and 2 are optional. Completing these items will assist EPA and state and local governments in locating and assessing hazardous waste sites. Although completing the items is not required, you are encouraged to do so.*

### Sketch Map of Site Location: (Optional)

Sketch a map showing streets, highways, routes or other prominent landmarks near the site. Place an X on the map to indicate the site location. Draw an arrow showing the direction north. You may substitute a publishing map showing the site location.

### Description of Site: (Optional)

Describe the history and present conditions of the site. Give directions to the site and describe any nearby wells, springs, lakes or housing. Include such information as how waste was disposed and where the waste came from. Provide any other information or comments which may help describe the site conditions.

### Signature and Title

The person or authorized representative (such as plant managers, operators, attorneys) of persons required to notify must sign the form and provide a mailing address (if different than address in item A). For other persons providing notification, the signature is optional. Check the boxes which best describe the relationship to the site of the person required to notify. If you are not required to notify, check "Other."
**FINAL LAB REPORT**

**DATE 03/11/86**

**LAB ID 18731** REPORT TO B/BARRY DUE DATE 03/25/86

**SOURCE LOCATION S BURL QU CITY WELL** COLLECTION DATE 02/25/86

**PROGRAM 021-MULTI-SITE COOP AGREEMENT** AMBIENT WATER SAMPLE Y

**SUBMITTED BY B/BARRY** PHONE 828-3395 SUBMIT DATE 02/25/86 LEGAL NO

**SAMPLE NOTES:**

<table>
<thead>
<tr>
<th>TEST CODE</th>
<th>TEST NAME</th>
<th>RESULT</th>
<th>UNIT OF MEASURE CODE</th>
<th>REMARKS</th>
<th>PROCESS DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TCR</td>
<td>CHROMIUM TOTAL</td>
<td>&lt; 1</td>
<td>UG/L</td>
<td></td>
<td>03/10/86</td>
</tr>
</tbody>
</table>
Applicant The Burton Corporation’s Consolidated Reply Memorandum Regarding Consideration of Soil Testing Results

Applicant, The Burton Corporation (“Burton”), submits this Reply Memorandum in further support of its February 10, 2020 Memorandum of Law Regarding Consideration of Soil Testing Results and in response to (1) the Memorandum in Response to Burton Memorandum on Soil Testing filed by Laurie Smith and a number of other potential interested parties on February 24, 2021 (the “Smith Filing”), and (2) the South Burlington Fire District #1’s (“SBFD #1”) Response to Burton Memorandum Regarding Consideration of Soil Test Results filed by the South Burlington Fire District #1 on February 25, 2021 (the “SBFD #1 Filing”).

It bears noting at the outset that neither Smith nor SBFD #1 have introduced any evidence the Project at issue here will actually “involve the injection of waste materials or any harmful or toxic substances into ground water or wells,” fail to meet “Environmental Conservation Department regulations regarding the disposal of wastes,” or interfere with the public’s use of a public investment. 1

1 See, e.g., SBFD #1 Filing at 2 (“[W]e don’t have results of the first round of sampling. We don’t know what will be required for or found from the anticipated second round. And we certainly don’t have any way to know what kind of remediation will be required.”).
could *theoretically* cause contamination issues, and for that reason Burton cannot satisfy its burden of proof on Criteria 1B and 9K until those potential issues are further investigated.

That is a remarkable position. The reality is that just about *any* development involving site work—and certainly any such development in an urban or industrial setting—could *potentially* disturb contaminated soils. That doesn’t mean, however, that it is necessary or appropriate for the District Commission to begin ordering every applicant seeking to redevelop some part of an urban or industrial property to complete the expensive and time-consuming process of testing, characterizing, and apparently remediating its entire property before receiving an Act 250 permit. But that is effectively what the Smith and SBFD #1 Filings are asking the Commission to require of Burton here.

Smith’s and SBFD #1’s positions improperly conflate the Commission’s jurisdiction to regulate “development” with the Department of Environmental Conservation’s broader jurisdiction to regulate hazardous waste. The Commission’s jurisdiction is, of course, limited to review of proposed “developments” and their impacts. 10 V.S.A. § 6081 (“No person shall . . . commence development without a permit.”); 10 V.S.A. § 6086(a) (“Before granting a permit, the District Commission shall find that the subdivision or development: [listing criteria]”).

In other words, the scope of the Commission’s authority over contaminated property is limited to the scope of the proposed development activity on that property. Unlike the Department of Environmental Conservation—which has plenary authority to order the investigation and remediation of any potential “release,” whether connected to a development or not—2—the Commission’s mandate is simply to determine whether a particular *project* satisfies the Act 250 criteria. In the present context, that means even if the proposed development interacts

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2 See generally 10 V.S.A. Chapter 159.
with contaminated materials, the Commission’s review is limited to ensuring that the Project “will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells,” 10 V.S.A. 6086(a)(1)(B), or “unnecessarily or unreasonably endanger the public or quasi-public investment in” an adjacent public facility. 10 V.S.A. 6086(a)(9)(K).

The evidence in this matter is that the proposed development will either avoid any contamination identified or if avoidance is not feasible, the contaminated material will be addressed pursuant to the IRule, which is designed to prevent, among other things, the injection of hazardous materials into the surrounding environment. See Burton Mem. Ex. 1; Burton App. Ex. 1 at 13. Although the IRule does not require a “permit,” it does prohibit the injection of hazardous wastes and it is the “applicable regulation” to which Criterion 1B requires Burton to comply. 10 V.S.A. § 6086(a)(1)(B). Indeed, the SBFD #1 Filing acknowledges that the ongoing site study “under DEC’s application of the IRule could manage [its] concerns adequately.” SBFD #1 Filing at 2. Simply put, Burton has at least satisfied its burden of production under Criteria 1B and 9K.3

The opponents have not provided any evidence to the contrary, nor made any showing that the soil test data is necessary for the Commission’s review. The Smith Filing argues that Burton must show that “notwithstanding the known presence of contaminants on the site, the locations that will be disturbed during construction of this project do not contain those [contaminated] soils.” Smith Filing at 2. But again, that is not what the relevant Act 250 criteria require.4 There is undisputed evidence that contaminated soils can be handled safely and without

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3 As Burton explains in its initial memo, Criterion 3 is not relevant to the issue here, as that criterion is concerned with the quantity, not quality of existing water supplies. See In re Pion Sand and Gravel Pit, No. 245-12-09, 2010 WL 2888342, slip op. at 11–12 (Vt. Super. Ct. Envtl. Div. July 2, 2010). Water quality is appropriately considered under Criterion 1B and 9K.

4 As Burton points out in its initial memo on this issue, if that were the standard for Criteria 1(B), the Commission would need to require soil testing and pre-characterization of soils for every project where
“injection” in soils or groundwater or endangering any water sources, \textit{regardless} of whether the Project touches upon contaminated soils. \textit{See} Burton Mem. Ex. 1. The criteria require Smith and SBFD #1 to muster evidence to the contrary demonstrating that the development \textit{will}, notwithstanding the IRule, involve an “injection” of hazardous materials or interfere with or jeopardize public investments, otherwise there is no dispute under Criteria 1B and 9K. In other words, opponents need to produce evidence showing that the development activity—conducted according to the IRule—does not meet the applicable criteria regardless of whether contamination is present.\footnote{See, e.g., \textit{In re Hinesburg Hannaford, Act 250 Permit}, 2017 VT 106, ¶ 51–53. In \textit{Hinesburg Hannaford}, relied on by the Smith Filing, appellants \textit{did} produce evidence that the applicant’s stormwater design would, for specific reasons, not be able to satisfy the relevant stormwater regulations, and the Court held that the applicant was then required to counter that evidence beyond their initial assertion that the design would comply. \textit{Id.} But that is not the case here. Here, at most, Smith and SBFD #1 have simply pointed out that the IRule \textit{may} come into play during the development; unlike the \textit{Hinesburg Hannaford} opponents, they have not suggested that the Project will not comply with it even if it does. Specifically, there is no evidence that (1) the Project will actually result in a release of contamination (or even that contamination is present) or (2) that the development will not be able to comply with the IRule if contamination is discovered.}

Opponents have presented no evidence that the development will result in an injection of hazardous waste. On this issue, Smith relies only on the 1998 VTDEC Site Management Activity Completed (“SMAC”) letter notifying the previous property owner that all remediation and investigation activities were complete and that “the site does not pose any unacceptable risk to human health or the environment.” Burton App. Ex. 12. That is not evidence that “injection” of hazardous waste will occur. Nor is the documentation that the SBFD #1 relies on—a VTDEC preliminary site investigation from 1985, indeed the same investigation that was resolved in the SMAC letter—evidence of an “injection.”
Finally, Burton is not required to obtain approval of a Corrective Action Plan ("CAP") prior to issuance of a permit, nor is Burton relying on approval of a CAP to satisfy its burden as Smith contends. Smith Filing at 2–3. A CAP is prepared when a site investigation finds that hazardous materials pose a risk to sensitive receptors (such as water supplies). IRule § 35-601. The current investigation is not concerned with soils involved in the development activity and has only just begun: there is no evidence to conclude that a CAP is even necessary or would relate to the Project. See Burton Mem. Ex. 1.

Conclusion

Burton has satisfied its burden under Criteria 1(B) and 9(K). The opponents have not articulated any evidence to the contrary.

Dated at Burlington, Vermont this 1st day of March, 2021.

By: ________________________________
Brian S. Dunkiel, Esq.
Jonathan T. Rose, Esq.
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
bdunkiel@dunkielsaunders.com
jrose@dunkielsaunders.com
(802) 860-1003

Attorneys for the Applicant
STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION

Act 250 Land Use Permit Application
#4C0174-6 & #4C0368-3
The Burton Corporation, Burlington

CERTIFICATE OF SERVICE

I, Grace Grundhauser, certify that on March 1, 2021, I served copies of the Consolidated Reply Memorandum Regarding Consideration of Soil Testing Results on behalf of the Burton Corporation to the service list below by the delivery method noted:

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Dated at Burlington, Vermont, this 1st day of March, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal